

## FIRST DIVISION

[ G.R. No. 140732, January 29, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOB CORTEZANO Y PAJO, ACCUSED-APPELLANT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

Accused-accused-appellant Job Cortezano y Pajo was charged with Murder in Criminal Case No. RTC '98-266 before the Regional Trial Court of Calabanga, Camarines Sur, Branch 63.

At his arraignment, accused-appellant entered a plea of not guilty. Trial on the merits proceeded and thereafter, a judgment was rendered by the trial court convicting accused-appellant of the crime charged. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, accused Job Cortezano is here found GUILTY of the offense of Murder. He is ordered to suffer the penalty of Reclusion Perpetua and to pay the heirs of Roderick Valentin the following amounts:

1. actual damages in the amount of P16,520.00;
2. P50,000.00 for the death of the victim;
3. P30,000.00 for moral damages; and
4. to pay the costs.<sup>[1]</sup>

Accused-appellant is now before this Court, raising the following errors:

#### I

THE COURT A *QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE IDENTIFICATION OF THE ACCUSED BY PROSECUTION WITNESS JERNY VALENTIN.

#### II

THE COURT A *QUO* GRAVELY ERRED IN CONSIDERING THE ALLEGED DYING DECLARATION OF THE DECEASED IN THE IDENTIFICATION OF THE ACCUSED.

#### III

THE COURT A *QUO* ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED.<sup>[2]</sup>

The events of this fateful incident, according to the prosecution, unraveled at 7:00 in the evening of May 30, 1998, when the unsuspecting victim, Roderick Valentin, and his younger brother, Jerny, were on their way to fetch fresh water from a well in Daligan, Bonawon on board a banca. The darkness and silence of the early evening were shattered when a flashlight beam originating from some point along the shore fell on Roderick and a gunshot rang out. The bullet hit Roderick in the chest. Within seconds, the light shifted and focused on Jerny. Another shot was fired, but it missed him.

The gunman extinguished his light and approached the banca. Jerny, recovering from the shock of the unexpected attack, got hold of his flashlight and beamed it on the approaching shooter. From a distance of about six (6) meters, both Jerny and the wounded Roderick immediately recognized accused-appellant Job Cortezano. Despite the shock and pain, Roderick asked Cortezano why he had shot him (Roderick). Alarmed that he had been recognized and identified, Cortezano hurriedly left the scene. Jerny then started paddling the banca towards the direction of their house to get help for Roderick.

Jimmy Valentin, father of Roderick and Jerny, heard Jerny repeatedly screaming that Roderick had been shot by Cortezano. They immediately transferred Roderick to a rented motorized banca to bring him to the nearest hospital. On the way to the hospital, Roderick kept crying from the pain and muttering that he was shot by Cortezano. Roderick never reached the hospital alive. He expired at 10:00 that very night cradled in the arms of his mother, Tita Valentin.

At the time of his death, Roderick was only 25 years old, and was the eldest child. His P200.00 daily wage as a fishpond worker helped support his parents and siblings. The material loss of the family compounded the emotional trauma that it suffered from Roderick's untimely demise. These events and circumstances were narrated by Jerny, Jimmy and Tita Valentin on direct- and cross-examination.

Jesus Alonzo, barangay captain of Daligan, Tinambac, Camarines Sur, testifying for the prosecution averred that the day after Roderick was shot, Job Cortezano's father informed him that his son wanted to surrender. Upon Alonzo's questioning, Cortezano admitted having shot Roderick with a gun which he turned over to a certain Victor Pelicia, a CAGU member from Siruma, Camarines Sur. Alonzo turned over Cortezano to the police authorities at the PNP Tinambac Headquarters.

Another prosecution witness, PNP Investigator Crescencio Arganda, testified that the crime was reported by Jimmy Valentin and entered in the police blotter on May 31, 1998, the day after the shooting. He also recorded therein the surrender and detention of Cortezano.<sup>[3]</sup>

The last witness for the prosecution was Dr. Salvador Betito, Jr., who conducted the post-mortem examination of Roderick's remains. His medico-legal autopsy report showed that the bullet entered Roderick's back, piercing his chest, then exiting 3 inches away from the right nipple. Rapid internal and external hemorrhage secondary to the gunshot wound was the reported cause of death. Judging from the bullet's trajectory and the location of the entrance and exit wounds, Dr. Betito explained that the victim's back was turned to his assailant who was standing not too far to the left and rear of the victim.

The evidence for the defense consisted of the testimonies of Job Cortezano himself, his father Hannibal Cortezano, and that of Jovenal Agbones, an acquaintance. Accused-appellant Cortezano denied that he shot Roderick, alleging he was nowhere near the scene of the crime at the time that it was supposed to have been committed. He narrated that he was at the house of his parents in downtown Daligan, Tinambac, Camarines Sur, from 7:00 in the evening of May 30, 1998 until 7:00 in the morning of the following day.

He came from the fiesta celebration of their barangay and was feeling inebriated, so he decided to sleep at his parents' house. Later, Victor Pelicia, a relative of his mother, woke him up and told him that he (Pelicia) had shot somebody. Accused-appellant did not bother to ascertain who had been shot and where it occurred, as he was still in a drunken stupor. He went back to sleep. The next day, he met the elder Valentins and they told him Roderick had been shot. It was only then that he remembered what Pelicia told him the night before.

Accused-appellant Cortezano described Pelicia as a member of the CAFGU who had the same build, height and countenance as him. On the night the shooting took place, Pelicia went to the Cortezanos' house for a drinking session. He brought with him, and even publicly displayed, a .38 caliber handgun. The following day, Cortezano stated, he was threatened by Pelicia when the latter learned that Cortezano was related to the Valentins.

Cortezano also denied having confessed to Barangay Captain Jesus Alonzo that he was the one who shot Roderick. He alleged that Alonzo came to the Cortezano residence upon the request of accused-appellant's father. The elder Cortezano had wanted his son to be escorted to the Tinambac Police Station because they were afraid of Pelicia's threats.

However, on cross-examination, accused-appellant admitted that he confessed to having shot Roderick, but only because of Pelicia's threats against him. He also described his relations with the Valentin family prior to the incident as harmonious, such that they had no reason to testify falsely against him.

Hannibal Cortezano, accused-appellant's father, corroborated his son's testimony. He narrated that in the late afternoon of May 30, 1998, his son and a certain member of the CAFGU, later identified as Pelicia, arrived at the Cortezano residence. Pelicia wanted to take a bath, so his son gave him directions to the well where the local residents fetched fresh water. Some thirty minutes later, Pelicia returned from the well. Hannibal overheard Pelicia say to the accused, "Even if that person will be brought to the hospital, he will not survive." Then Pelicia removed the gun tucked into the waistband of his pants, and took out two (2) bullets from the chamber of the gun. Pelicia dared the people around him to take the gun, but they were all intimidated by his threatening stance. Pelicia warned them not to say anything or something bad would happen to them. He left Cortezano's house the following day, May 31, 1998, at around 2:00 in the afternoon.

Hannibal further denied that he facilitated his son's surrender before Barangay Captain Alonzo, but admitted asking Alonzo to accompany Job to the police headquarters at Tinambac since he had been informed by police investigator Crescencio Arganda that Job was the primary suspect.

Jovenal Agbones testified that at about 7:30 of that fateful evening, he was at the Cortezano residence to attend the barangay fiesta celebration. While there, he heard Pelicia remark that a certain person would not survive even if he were brought to the hospital. After hearing these words, he got scared so he left and went home. He described Pelicia as having the same build as accused-appellant, but a little bit taller than the latter.

In convicting accused-appellant, the trial court lent much weight to Jerny Valentin's eyewitness account of the events and his identification of Cortezano as the perpetrator. The trial court held that Jerny Valentin, who was then 13 years old, delivered a straightforward, unshaken and convincing narrative of the incident about the shooting of his brother, Roderick Valentin by accused-appellant. Secondly, Jerny's testimony was corroborated by the dying declaration of the victim, Roderick. More particularly, the trial court found:

In the instant case, the declaration of Roderick Valentin that he was shot by accused Job Cortezano as told by him to his father and mother is considered by this Court as a dying declaration and an exception to the hearsay rule. He stated until that time that he died that it was Job Cortezano who shot him and while he was telling his father and mother that it was Job Cortezano who shot him, he further told them that he could not bear it anymore. In other words, he knew of his impending death. Under such circumstances, knowing that his injuries were fatal and being aware that he would die soon, he could be expected to tell the truth. There was no motive for him to tell falsehood because of his awareness that he will soon die, as a matter of fact, immediately after and he did not even reach the hospital, he died on their way to the hospital. So that his dying declaration as narrated by him to his parents is entitled to the highest credence because knowing his impending death, he would not make any careless and false accusation. All the requisites as narrated above in order that a dying declaration may be an exception to the hearsay rule has been complied with.<sup>[4]</sup>

The trial court refused to give credence to accused-appellant's defense of alibi and denial, considering that he was positively identified as the one who shot Roderick Valentin. It found the attendance of the aggravating circumstance of treachery and rejected accused-appellant's claim of the mitigating circumstance of voluntary surrender.

Accused-appellant assails the eyewitness testimony of Jerny Valentin as being riddled with inconsistencies and implausibilities. Firstly, he posits that it is contrary to normal human behavior for a perpetrator to come near his victim after shooting, when the natural instinct of a gunman would be to flee and escape detection or identification. Secondly, accused-appellant points out that while Jerny testified in court that he recognized accused-appellant from the beam of his flashlight, in his earlier sworn statement, Jerny averred that he recognized accused-appellant when the latter ran towards the forested area near the seashore. Considering that it was dark and Jerny was about six meters away from where the gunman stood, the solitary illumination from Jerny's flashlight could not have been sufficient for both Jerny and Roderick to identify the gunman with utmost certainty.

We do not agree. There is no standard form of behavior among perpetrators of

crimes. Some may flee from the crime scene, while others may approach the fallen victim to check on his condition or to see the job done. Still others go to take a look at the victim out of sheer morbid curiosity. There is nothing that precludes a gunman from going to his prey after shooting, especially when he does not expect resistance from the victim.

In the instant case, after having fired two shots, one for each of the Valentin brothers, in quick succession, it would not be contrary to known human behavior for accused-appellant to go to the banca, perhaps to ensure the success of his handiwork. Except for the Valentin brothers and accused-appellant himself, the place was deserted. It was dark, and therefore, he had no fear of being identified, much less apprehended. He only fled after Jerny's flashlight beamed on him and he realized his intended victims were not only alive, but were well enough to recognize him. Accused-appellant's actuations, as testified to by Jerny, are much in accordance with the behavior of most assailants. There is nothing implausible or incredible in Jerny's testimony on this matter.

It is of no moment that it was dark and that accused-appellant was about six (6) meters away from the Valentin brothers. We are aware of the fact that in a dark place, the brightness of a single lamp, or in this case a flashlight, is magnified. And when there are no obstructions, the beam of that flashlight can be as effective as the beacon of a lighthouse piercing the fog. Thus, we have repeatedly pronounced that flashlights, even mere moonlight or starlight, provides fair and sufficient illumination to identify an assailant.<sup>[5]</sup> Accused-appellant's assault on the credibility of the witness' testimony on that ground is therefore unmeritorious.<sup>[6]</sup>

There is no doubt that the Valentin brothers and accused-appellant knew each other very well. They are practically neighbors, residing in the same barangay. Accused-appellant even claims to be related to the Valentin brothers. Their ability to identify each other, even in unusual circumstances, cannot be easily impaired. Having gained familiarity with one another through the years, identification becomes a relatively easy task even from a considerable distance.<sup>[7]</sup> It is no wonder, then, that both Roderick and Jerny immediately recognized accused-appellant. Jurisprudence acknowledges that victims of criminal violence have the propensity for seeing, recognizing and remembering the faces and features of their attackers.<sup>[8]</sup> There is thus no compelling reason to doubt the accuracy of their identification of accused-appellant as their attacker.

Accused-appellant also points out that Jerny gave a different account of the events that fateful night in his sworn statement, casting doubt on the veracity of his testimony in court. Again, we find no merit in accused-appellant's contention. It is well-established that inconsistencies between testimony given in open court and sworn statements given to investigators do not necessarily discredit the witness since *ex-parte* affidavits are seldom complete.<sup>[9]</sup>

Moreover, it appears in the records of this case that Jerny was never allowed to explain the inconsistencies between his testimony and the sworn statement. The records attest to this:

Q: When you focused your flashlight to (*sic*) Job Cortezano on May 30, 1998, Mr. Witness, you agree with me that a