

FIRST DIVISION

[G.R. No. 139578, February 15, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL BANIEGA Y MORALES, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

At about 7:00 in the evening of February 10, 1993, SPO1 Felipe Tubianosa, Felix Baltazar and Rodolfo Julao went to the birthday party of Jorrel Cornelio at Bagong Nayon, Antipolo, Rizal. When they arrived at the party, they saw Jorrel Cornelio, accused-appellant Baniega and other persons engaged in a drinking spree. Felix Baltazar's group was offered drinks. Felix Baltazar overheard Felipe Tubianosa warn accused-appellant to be careful because he knew about their illegal activities, to which accused-appellant said nothing. After a while, he got up to relieve himself. Felix Baltazar noticed that accused-appellant was holding a crash helmet.

At 10:00 in the evening, Felipe Tubianosa, Felix Baltazar, Rodolfo Julao and a certain Danny left the party. On their way home, Felix Baltazar noticed a man wearing a crash helmet and a jacket following them. The man was pushing a motorcycle. Felix Baltazar also noticed that it was the same crash helmet and jacket accused-appellant had at the party.

When they were about twenty meters from his house, Felipe Tubianosa told Felix Baltazar to bring home Rodolfo Julao, who was drunk. Felipe Tubianosa then walked to his house alone.

Twenty minutes later, as Felix Baltazar was walking towards his house forty meters away from Tubianosa's house, he saw a crowd milling around the body of Felipe Tubianosa sprawled on the ground.

Meanwhile, Michael Casiguran, who was on his way home to Bagong Nayon, Antipolo, Rizal, saw accused-appellant, who was wearing a gray vest and a blue helmet, park his motorcycle. Moments later, he saw accused-appellant follow Felipe Tubianosa as the latter was about to urinate. He was twelve to fifteen meters away from Felipe Tubianosa, while accused-appellant was three to four meters away from Felipe Tubianosa. Other than the three of them, there was nobody else around.

Casiguran proceeded home. When he was inside his house, he heard a gunshot. He peeked through the window and saw accused-appellant running towards his motorcycle and Felipe Tubianosa sprawled on the ground.

SPO1 Madamba and PO1 Buenaflor went to the scene of the crime to investigate. They learned that Tubianosa was shot on the forehead by a certain "Mandy" which was the name by which accused-appellant was commonly known.^[1]

Michael Casiguran identified accused-appellant as the gunman. Four days after the incident, accused-appellant surrendered to the Antipolo police.

Accused-appellant was charged with murder in an Information^[2] which reads as follows:

That on or about the 10th day of February, 1993, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, with premeditation and treachery taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot one SPO1 Felipe M. Tubianosa, thereby inflicting upon the latter mortal wounds which caused his death.

Accused-appellant pleaded "not guilty" to the charge. Trial on the merits then ensued.

In his defense, accused-appellant claimed that at 3:00 in the afternoon of February 10, 1993, he attended the birthday party of Jorrel Cornelio in Bagong Nayon 2, Antipolo, Rizal. At about 5:00 of that same afternoon, his cousin, Arnel Conde, arrived and informed him that the motorcycle which he borrowed broke down along the road. Conde allegedly failed to find a mechanic, so he left the motorcycle with accused-appellant while he went to tell its owner what happened.

Accused-appellant went on to say that at 7:00 p.m., a certain Bong, whose real name was Nelson Paredes, also arrived at the party riding a red motorcycle, which he parked in front of Jorrel's house. Bong was wearing a grey vest and a blue crash helmet. Felipe Tubianosa's group arrived at the same time.

The drinking spree ended at 9:00 in the evening. Felipe Tubianosa's group left while accused-appellant went home with his companions. Bong passed in front of accused-appellant's house on board his red motorcycle and told them that he was going to Marikina. Bong wore a brown jacket which he borrowed from accused-appellant.

Accused-appellant and his group resumed their drinking session. Accused-appellant felt sleepy after consuming fourteen to fifteen bottles of beer. Before he left the group to retire, he asked Samuel and Buboy to go back to the house of Jorrel and get the motorcycle left by his cousin. The group moved to the front of the house and continued drinking, after which they left.

When accused-appellant woke up the following morning, he was told that Felipe Tubianosa had been killed. Two days later, he learned that he was a suspect in the killing and that policemen were looking for him. He therefore "surrendered" to the Vice-Mayor of Antipolo City who, in turn, brought him to the police station.

The trial court gave credence to the prosecution's version and rendered a decision,^[3] the dispositive portion of which reads as follows:

WHEREFORE, premises considered, accused Manuel Baniega y Morales is hereby found guilty beyond reasonable doubt of the crime of Murder and

is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Felipe Tubianosa the amount of P15,100.00 as actual damages and P50,000.00 as death indemnity plus P20,000.00 as temperate damages.

Accused-appellant is now before us, claiming that the trial court erred:

- I. In convicting him of murder without any qualifying circumstance established beyond reasonable doubt from the evidence on record; and
- II. In disregarding evidence pointing to the fact that it was not him but one Nelson Paredes who killed the victim Felipe Tubianosa.^[4]

Basically, accused-appellant contends that he was in his house sleeping at the time Felipe Tubianosa was killed. He further contends that Michael Casiguran's testimony pointing to him as the perpetrator was merely circumstantial.

Admittedly, Michael Casiguran did not see accused-appellant actually shoot Felipe Tubianosa. However, Michael Casiguran positively identified him prior to and after the killing. His positive identification was the trial court's basis for convicting accused-appellant.

For an accused to be convicted of murder, he must be positively identified as the assailant. Positive identification requires essentially proof of identity and not *per se* an eyewitness account of the very act of committing the crime. A witness may identify an accused as the perpetrator of the crime by direct evidence, *i.e.*, an eyewitness account of the commission of the crime. There are instances, however, when a witness may not have actually seen the very act of commission of a crime, but he may still be able to identify the accused as the perpetrator as when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.

In the case at bar, the positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to a fair and reasonable conclusion that the accused is the author of the crime to the exclusion of all others. Otherwise, if circumstantial evidence could not be resorted to in proving the identity of the accused when direct evidence is not available, then felons would go scot-free and the community would be denied proper protection. The rules on evidence and jurisprudence sustain the conviction of an accused through circumstantial evidence when the following requisites concur: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused.^[5]

The above requisites have been fully met in this case when the trial court found the following circumstances:

1. Casiguran saw the accused when the latter parked his motorcycle at the crime scene;
2. He also saw the accused follow the victim when the latter was urinating. In fact, they had eye to eye contact before the shooting;

3. When Casiguran heard a single shot, he immediately peeped through the window of their house and saw the victim sprawled on the ground; and
4. The accused, whom he previously saw, ran fast towards the parked motorcycle and fled.^[6]

The above circumstances were based on Michael Casiguran's consistent and categorical identification of accused-appellant as the person whom he saw following the victim prior to the killing and fleeing after the killing.

However, accused-appellant tries to discredit Michael Casiguran's testimony by claiming it as improbable and unbelievable.

First, accused-appellant submits that it is improbable for him and Casiguran to have "eye to eye contact," considering that Casiguran's distance from accused-appellant is estimated to be 9 to 12 meters. Casiguran did not state this in his sworn statement before the police.

We are not impressed. As the Solicitor General aptly observes:

Considering the condition of the place, *i.e.* that it was lighted and the relative positions of appellant and Michael, eye to eye contact at that level is not impossible.

Furthermore, Michael Casiguran was only seventeen (17) years old when the incident happened. At his relatively young age, his vision is presumably unimpaired, affording him the opportunity to have an eye to eye contact with appellant.^[7]

As to the seeming discrepancy in Casiguran's testimony and his statement before the police, the same does not necessarily discredit the witness since *ex parte* affidavits are often incomplete. They do not purport to contain a complete compendium of the details of the event narrated by the affiant, and have been taken as inferior to court testimony.^[8]

Second, accused-appellant submits that the one-minute period from the time he heard the gun report and the time he peeped through the window could not be considered as immediate.

Accused-appellant's submissions lack merit. It has been held that an error in the estimation of time is too immaterial to discredit the testimony of a witness, especially when time is not an essential element or has no substantial bearing on the fact of the commission of the offense.^[9]

Third, accused-appellant argues that if he was running away from Casiguran's vantage point, then it is impossible for the latter to have seen his front.

Accused-appellant's intention to discredit Casiguran's testimony on said matter falls short.

Defense counsel:

x x x

x x x

x x x

Q: When you saw Manuel Baniega, what was he wearing at that time?

A: He was wearing blue helmet and gray vest.

Q: His face was covered by the said helmet, is it not?

A: No.

Q: What do you mean by No. Are you telling the court that you saw the face of the man running?

A: Yes, because I previously saw him when he parked his motorcycle.

Q: I am not asking you at the time when he parked his motorcycle. I am asking you at the time when you saw this Manuel Baniega allegedly running away from the scene of the incident, is it not that when you peeped thru the window and saw this man running away, this man was wearing a helmet?

A: Yes.

Q: And you were actually looking at him from his side?

A: No, his front.

Q: Was he running or was he simply walking?

A: Running.

Q: How fast was he running?

A: He was running fast.

Q: You only saw him for a very short time or short fleeing (sic) time?

A: Yes.

Q: Would you say he was in your length of vision for two or one seconds (sic)?

A: Yes.

Q: The only reason why you were certain that it was Manuel Baniega that you saw, it's because he was the one whom you saw following your Kuya Peng when the latter was urinating, is it not?

A: Yes.