

SECOND DIVISION

[G.R. No. 114917, January 29, 2001]

LUCIBAR ROCA Y BONDARIO, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

QUISUMBING, J.:

On appeal by *certiorari* are the Decision^[1] dated November 15, 1993, of the Court of Appeals in CA-G.R. No. 12317 and its Resolution^[2] dated March 21, 1994, denying petitioner's motion for reconsideration. The assailed decision affirmed the judgment of the Regional Trial Court of Dumaguete City, Branch 44, in Criminal Case No. 8982, ^[3] convicting petitioner of the crime of homicide. Petitioner does not seek acquittal but prays for the modification of the penalty imposed so that he will be entitled to probation.

Petitioner was charged with murder, in the Information against petitioner, dated October 15, 1989, as follows:

"That on or about the 1st day of August 1989, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill and armed with a deadly weapon, to wit: a knife, did then and there wilfully (sic), unlawfully, and feloniously attack, stab and wound one OLIVER DIAZ with treachery in that said OLIVER DIAZ, was stabbed and wounded suddenly and unexpectedly with said weapon without giving him a chance to defend himself to insure its execution of the act without risk to said accused out of any defense which said OLIVER DIAZ might make, thereby inflicting upon him a stab wound (L) which injury caused the death of said OLIVER DIAZ.

"That the crime was committed with the qualifying circumstance of *alevosia*.

"Contrary to Art. 248, par. 1 of the Revised Penal Code."^[4]

Petitioner was arraigned on December 4, 1989, and with the assistance of counsel, entered a plea of not guilty. At the pre-trial conference of August 9, 1990, however, petitioner changed his mind and manifested his willingness to enter a plea of guilty to the lesser offense of homicide with mitigating circumstances. Private complainant Paciana Diaz, the victim's mother, interposed objections. Thus, trial on the merits ensued.

The prosecution relied heavily on the testimony of eyewitness Miraflor Salvero, common law wife of William Diaz, a brother of the victim. Her testimony, as summarized by the trial court and adopted by the appellate court reads:

". . .At about 4:00 o'clock in the afternoon of August 1, 1989, she was going to the boulevard and upon passing the residence of Paciana Diaz, noticing that there were plenty of people and observing that there was a commotion, she went near. She saw deceased Oliver Diaz coming from the south along Rizal Avenue, and as he turned to the right on a blind corner along a store, he was suddenly stabbed by the accused with a Batangas knife. The deceased was hit on the left side of his body. Accused was about to thrust the knife again, but the victim ran (away). Eventually, they saw the victim fall to the ground at a distance towards the south, and with the help of one Danny Gomez, they loaded the victim on a pedicab and brought him to the Holy Child Hospital, and although he was immediately given emergency treatment, the victim died..."[5]

Petitioner interposed incomplete self-defense and defense of a relative. His version of the incident, as capsulized by the trial court and adopted by the appellate court, is as follows:

"...In the afternoon of August 1, 1989, while he was playing majong (sic) in the house of Norma Jumawan, he heard a commotion and quarrel, which prompted him to stand up and went (sic) out into the road. People were shouting the nickname of his brother 'Toto' and he went near the place of the incident, and saw his brother Sergio Roca, Jr., nicknamed 'Toto' being ganged up by Eliseo Diaz, Paciana Diaz, Sandra Diaz, and Estella Diaz and Roy Diaz. Both Roy Diaz and Paciana Diaz were armed with bolos and Eliseo Diaz was armed with a wooden club. Estella Diaz and Sandra Diaz were holding each separately to both legs and shoulders of his brother. He pushed and kicked Roy Diaz which caused the latter to fall. But, Eliseo Diaz came around and hit him on the head resulting in his falling on the ground. Upon falling to the ground, he saw a stainless (steel) knife lying on the sand where he fell. He picked up the knife and saw victim Oliver Diaz coming to his direction. Victim Oliver Diaz went near him and struck him three times with a wooden club, and he was hit on the arms and forearms. When the victim tried to deliver the fourth blow, he stabbed Oliver with the knife he earlier picked up. Afterwards, he ran outside, and went back to the house of Norma Jumawan, the majong place, and hid himself there. At about 7:00 o'clock in the evening of the same day, he went to the house of his sister-in-law in Miciano Road, and later, he went to a house of a friend in Lo-oc, both in the same city, and past twelve midnight, he went back to the house of his sister-in-law. The following day he went to the Negros Oriental Provincial Hospital, but, being told that they cannot give him a medico-legal report, he proceeded to the City Health Office where he was examined by Dr. Edilburgo Ruperto, who gave him a medico-legal report (Exh. '2'). After having been examined by Dr. Ruperto he boarded a pedicab from the City Health Office, and proceeded to the bus terminal at Lo-oc and boarded a passenger bus for Bais City. On August 5, 1989, his wife arrived in Bais City, and he requested her to (ask) the Dumaguete City Police to fetch him for fear of his life. Upon arrival of the Dumaguete policemen in Bais City, he surrendered, and afterwards, he was brought to Dumaguete City..."[6]

The trial court found petitioner's testimony to be improbable and full of inconsistencies, noting that he was evasive and hesitant on the witness stand. Finding that there was no question as to the identity of the killer of the deceased Oliver Diaz, the trial court then convicted petitioner of homicide. The dispositive portion of the judgment states:

"WHEREFORE, premises considered, this Court finds accused GUILTY beyond reasonable doubt of the crime of Homicide as defined under Article 249 of the Revised Penal Code, and after applying the Indeterminate Sentence Law, and appreciating in his favor the mitigating circumstance of voluntary plea of guilt hereby sentence accused Lucibar Roca y Bondario to the indeterminate penalty of imprisonment from six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, and to pay the heirs of Oliver Diaz civil indemnity in the sum of Fifty Thousand (P50,000.00) Pesos.

"SO ORDERED."^[7]

On appeal, the Court of Appeals affirmed his conviction, and subsequently denied his motion for reconsideration.

Petitioner now assigns the following issues for our resolution:

1. Is Miraflor Salv[e]ro, sister-in-law of the deceased, Oliver Diaz, worthy of credence and belief?
2. Did petitioner (accused) act in incomplete self-defense and defense of a relative in killing the deceased Oliver Diaz?
3. Did petitioner voluntarily surrender to the authorities so as to be entitled to this mitigating circumstance?
4. Should the penalty to be imposed on petitioner in RTC Crim. Case No. 8982 (CA-G.R. No. 12317) be probationable?^[8]

The *first issue* involves the credibility of the prosecution's main witness, Miraflor Salvero. Petitioner contends that inasmuch as the records show her to be the common-law-wife of the victim's brother, her testimony is tainted with bias.

The Office of the Solicitor General counters that it is jurisprudentially settled that mere relationship of the prosecution witness to the victim does not necessarily make her testimony unworthy of belief.

Where the bone of contention is the credibility of a witness, settled is the rule that the trial court's assessment of a witness' credibility is accorded great weight by appellate courts absent any showing that the trial court overlooked certain matters which, if taken into consideration, would have materially affected the outcome of the case.^[9] And where the trial court's findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.^[10] The determination of the credibility of witnesses is best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the

witness stand, a vantage point denied appellate tribunals.^[11]

In the instant case, we note that petitioner fails to point out any matter which may have been overlooked or misconstrued by the trial court and the appellate court in their respective assessments of Miraflor Salvero's testimony. Petitioner's main contention that she was biased against him is merely grounded on her common law relationship to the brother of the deceased. Petitioner presented no concrete proof to show her testimony was biased. We have held that the witness' relationship to the victim does not automatically affect the veracity of his or her testimony.^[12] No legal provision disqualifies relatives of the victim of a crime from testifying if they are competent. Relationship alone is not reason enough to discredit and label Miraflor Salvero's testimony as biased and unworthy of credence. This Court has taken cognizance of the fact that in many instances, crimes are committed with just the victim's kinfolk as witnesses.^[13] Note further that the records are bare of any showing that Miraflor Salvero was motivated by any ill motive to testify falsely against petitioner. Where there is no evidence to show any dubious reason or improper motive for a prosecution witness to bear false testimony against the accused or falsely implicate him in a crime, his or her testimony should be given full faith and credit.^[14] We find no reason therefore, to disturb the findings of the trial court in which respondent court concurred, respecting the credibility of prosecution eyewitness Miraflor Salvero.

On the *second issue*, petitioner faults respondent court for not appreciating his claim of incomplete self-defense and defense of a relative, it having been established during the trial that his brother was the subject of an attack by Eliseo, Sandra, Paciana, Estela and Roy, all surnamed Diaz, who were armed with bolos and a wooden club. Furthermore, petitioner alleges that the court *a quo* erred when it did not give credence to his claim of incomplete self-defense, since he was clubbed by the deceased, whom he had to stab with a knife he picked up from the ground, so as to protect himself. Petitioner points out that the victim was a drug addict and an ex-convict, notorious in the neighborhood for violent behavior.

The Solicitor General notes that petitioner's stance is not supported by the records. The prosecution clearly proved that petitioner stabbed the victim while the latter was running towards his house. Thus, unlawful aggression was absent on the part of the victim, and this negated petitioner's theory of incomplete self-defense and/or defense of a relative.

In invoking the justifying circumstance of self-defense, complete or incomplete, the *onus probandi* is shifted to accused to prove by clear and convincing evidence all the elements of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.^[15] The accused must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence since he admits the commission of the alleged criminal act.^[16]

For defense of a relative to be appreciated, the following requisites must concur: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person