

SECOND DIVISION

[G.R. No. 128617, June 20, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CESAR BACUS Y VILLAHERMOSA, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision,^[1] dated September 26, 1996, of the Regional Trial Court, Branch 57, Cebu City, finding accused-appellant Cesar Bacus guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Roel Sabejon, the amount of P50,000.00 as indemnity and P6,000.00 as actual damages.

The information against accused-appellant alleged —

That on or about the 19th day of March 1995, at about 6:45 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there attack, assault and shoot one Roel Sabejon with said deadly weapon on the different vital parts of his body and inflicting upon him physical injuries which caused the death of said Roel Sabejon.^[2]

Accused-appellant pleaded not guilty to the crime charged and trial ensued thereafter.

The prosecution presented five witnesses, three of whom claimed to be eyewitnesses to the shooting by accused-appellant of the victim Roel Sabejon.

Fe Claros, the elder sister of the victim, testified that at about 6:45 in the evening of March 19, 1995, while she was inside her house, in Villa Bulsita, Bulacao, Pardo, Cebu City, she heard two shots coming from the billiard hall located just outside her house. When she went outside to verify the source of the shots, she heard a third shot and saw her brother being shot from behind by accused-appellant. She saw accused-appellant pointing his gun at the victim and kept on pulling the trigger although the gun had stopped firing. Claros said she picked up a stone and wanted to throw it at accused-appellant, but she was overcome with fear that accused-appellant might shoot her. When accused-appellant fled, Claros shouted for help. When the policemen arrived, she told them that her brother had been shot by accused-appellant. She went with the policemen to look for accused-appellant whom they found in the house of his mother-in-law near the Pardo cemetery. Accused-appellant, whose face and upper body were wet, came out of the toilet carrying two plastic bags. When asked about the contents of the bags, accused-appellant told the policemen that he had gone to the toilet to relieve himself and

that he was then about to throw the waste matter in the plastic bags inside the cemetery.^[3]

Giovanni Mantalaba, a 12-year-old nephew of the victim, testified that in the afternoon of March 19, 1995, he was at the store of Baby Dolly to have his sister's P100.00 bill changed. He saw Ronnie Lambo calling accused-appellant and the two thereafter walked towards Peace Valley. Accused-appellant returned alone, immediately went to the billiard hall, and shot the victim three times. Mantalaba said he ran away after witnessing the shooting incident. Accused-appellant also ran away and was chased by Lito, the elder brother of the victim. Upon cross-examination, Mantalaba stated that he stayed in the store for a while even after the P100.00 bill had been changed because he suspected that Lambo and accused-appellant were going to kill the victim. However, he did not tell the victim or anyone about what he thought accused-appellant was about to do.^[4]

Francisca Sabejon, the mother of the victim, was also presented as witness. She recounted that in the evening of March 19, 1995, she was tending her *sari-sari* store when accused-appellant bought some ice water which he took with him to the billiard hall. Sabejon said she heard a shot and saw accused-appellant shoot the victim twice. She shouted for help but nobody came to help. She was able to take the victim to the Cebu City Medical Center where the latter died 15 minutes after arrival.^[5]

Francisca Sabejon submitted a receipt for P5,000.00 issued by the St. Francis Funeral Homes for funeral services of the victim (Exh. D), a photocopy of the receipt for P1,000.00 issued by the Parokya sa Santo Tomas de Villanueva as rental fee for the coffin of the victim (Exh. E), and a list of the expenses allegedly incurred for the victim's wake and funeral expenses.^[6]

SPO2 Godofredo Cimafranca, a policeman detailed at Pardo Precinct No. 7, was presented by the prosecution as a rebuttal witness. He testified that he and two other policemen went to Villa Bulsita to investigate a shooting incident. They were told by Fe Claros that accused-appellant was the suspect in the crime. Claros accompanied them to the house of accused-appellant's mother-in-law located near the cemetery where accused-appellant was allegedly hiding. They found accused-appellant coming out of the restroom carrying a bag which he claimed contained waste matter. Upon examination, however, Cimafranca found that the bag actually contained clothes. Accused-appellant looked tense, leading Cimafranca to think that he was about to flee. The police took accused-appellant to their headquarters for investigation.^[7]

Dr. Nestor Sator, the Medico Legal Officer of the PNP Crime Laboratory in Cebu City, submitted a medico-legal report (Exh. A) on the results of the autopsy conducted on Roel Sabejon.

Dr. Sator testified that he was able to recover a slug from a .38 caliber firearm inside the thoracic cavity of the victim. He also found two gunshot wounds on the head and trunk of the victim, both of which were fatal. On the head wound, the point of entry was at the left ear (inferior portion) post auricular region and the exit was at the right zygomatic region or the right cheek. Dr. Sator said he noted an area of tattooing adjacent to the head, indicating that the distance of the gunman from

the victim was two feet or less. As regards the trunk wound, the point of entry was at the back. No powder burns were found near such entrance. Dr. Sator opined that the powder burns must have been on the victim's clothes worn by him at the time he was shot. The victim also had a laceration on his chin which he must have sustained when he fell to the ground after being shot.^[8]

The defense presented five witnesses, including accused-appellant, who interposed the defense of alibi. Accused-appellant claimed that on March 19, 1995, he went to the house of his mother in Villa Bulsita to await the arrival of his brother from Manila. He stayed there until 6:00 in the evening and then went home to cook dinner and cleaned the toilet. While he was about to throw the garbage outside, he saw Fe Claros with some policemen. Cimafranca inspected the two plastic bags he was carrying and found it to contain garbage. Accused-appellant alleged that when the policemen arrived, he was half-naked. When Cimafranca asked about his shirt, he replied that he hanged it outside. According to accused-appellant, he heard Fe Claros tell the policeman that his (accused-appellant's) T-shirt was similar to the T-shirt worn by the man who shot her brother. Accused-appellant was thereafter taken to the police station for investigation.^[9]

The testimony of the accused-appellant was corroborated by Belinda Bacus, his common-law wife. Belinda testified that at around 6:00 in the evening on March 19, 1995, accused-appellant came from his parents' house in Villa Bulsita. Accused-appellant offered to cook dinner as Belinda was not feeling well. Later, accused-appellant went to the toilet to dispose of the garbage. Policemen then arrived and invited accused-appellant to the police station for questioning. Belinda was told by the policemen that accused-appellant was identified by Fe Claros as the one who shot her brother. The police asked accused-appellant to get the T-shirt he wore at Villa Bulsita. When accused-appellant showed the T-shirt, Fe Claros said it was the same one which the former was wearing at Villa Bulsita. At the police station, Francisca Sabejon, the victim's mother, allegedly asked the policeman to force accused-appellant to reveal the name of the person who killed her son, otherwise accused-appellant would be implicated in the crime. Francisca then allegedly told Belinda to persuade accused-appellant to reveal the killer's identity. Belinda said she confronted accused-appellant, but the latter denied any involvement in the killing of the victim who was his friend.^[10]

Andrea Gabayan, the mother of Belinda Bacus, was presented by the defense as a sur-rebuttal witness to corroborate the testimonies of the accused-appellant and Belinda as to the whereabouts of accused-appellants at the time of the shooting incident and the alleged contents of the plastic bags.^[11]

Emelita Lequigan was presented as an eyewitness for the defense. According to her, on March 19, 1995, at around 6:00 in the evening, while she was frying bananas at her store in Villa Bulsita, she saw Ronnie Lambo calling accused-appellant. She allegedly heard accused-appellant telling Lambo that he was not going with the latter as he was already going home. She later saw Lambo with a companion whom she did not recognize. Still later, while she was buying brown sugar at Francisca Sabeja's store, she heard a shot. She saw the victim fall to the ground and she ran towards her store. According to her, she did not recognize the assailant. Although the assailant's appearance was similar to that of accused-appellant, she stated that it could not have been him because accused-appellant had already gone home.^[12]

Cesar C. Cagalawan, a regional chemist of the NBI, Central Visayas Regional Office, testified on the results of the paraffin test which he conducted on accused-appellant on March 20, 1995 at 10:00 in the morning. His findings, as stated in his Chemistry Report (Exh. 2), yielded a negative result to the test for the presence of nitrates on accused-appellant. According to him, the result indicates that accused-appellant could not have fired a gun within 72 hours before said examination. However, upon cross-examination, Cagalawan stated that even in the absence of powder burns, it is still possible that a person fired a gun, as when he wore gloves or covered his hand with a handkerchief while firing a gun.^[13]

On September 26, 1996, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, foregoing considered, accused is hereby found guilty beyond reasonable doubt of the crime of murder and is hereby sentenced to suffer the penalty of reclusion perpetua. He is further ordered to indemnify the heirs of Roel Sabejon of the amount of Fifty Thousand Pesos (P50,000.00) plus actual expenses of Six Thousand Pesos (P6,000.00).^[14]

Hence this appeal. Accused-appellant makes the lone assignment of error that —

THE TRIAL COURT GRAVELY ERRED IN FINDING HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER BY RELYING ON THE INCREDIBLE ACCOUNT OF THE ALLEGED EYEWITNESS.^[15]

Accused-appellant questions the credibility of Fe Claros as an eyewitness, noting that all the eyewitnesses presented by the prosecution are close relatives by blood of the victim. He contends that, just as the trial court doubted the declarations of the two other eyewitnesses, namely, Francisca Sabejon and Giovanni Mantalaba, credence should not be given to the testimony of Fe Claros identifying accused-appellant as the one who shot and killed her brother.

Accused-appellant also disparages the testimony of SPO2 Godofredo Cimafranca that he was about to escape and was carrying plastic bags which contained clothes. Accused-appellant says these statements are mere conjectures or innuendos which the prosecution failed to substantiate.

The appeal has no merit.

First. Accused-appellant questions the credibility of the prosecution's eyewitnesses by reason of their being close relatives by blood of the victim. But this fact alone does not necessarily make them biased witnesses. In *People v. Villanueva*,^[16] the Court held that a witness' relationship to the victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating a crime to accuse thereof somebody other than the real

culprit.

Although the trial court did not give much weight to the testimonies of the two other eyewitnesses, it was unequivocal in giving credence to the testimony of eyewitness Fe Claros. It held that the positive identification of Cesar Bacus by Fe Claros as the one whom she saw shot and killed her brother is unquestionable.^[17] Indeed, the eyewitness account of Claros is clear, detailed, and consistent in all material points. Claros categorically stated that she went outside because she heard two shots and, on the third shot, she saw her brother being shot by Cesar Bacus.^[18] She noted that at that time her brother's back was to accused-appellant and the latter was pointing a gun at her brother as he kept pulling the trigger although the gun had stopped firing.^[19] This account of Claros is consistent with the findings of Dr. Nestor Sator, who testified that the fatal gunshot wound at the head was inflicted at close range and that the point of entry of the trunk wound was at the back.^[20] Claros positively identified the accused-appellant as her brother's assailant considering that he was easily recognizable as he usually frequented their place because he was their friend and neighbor.^[21]

In her testimony during cross-examination, Claros said that when accused-appellant saw her and the policemen, accused-appellant called out to her and told her that he was not the one who killed Roel. This is very revealing considering that at that time Claros had not even pointed to accused-appellant as the assailant of her brother. As Claros testified:

- Q As a matter of fact, you ask Cesar Bacus and asked who was the one who shot your brother, I will withdraw that, Your Honor, did you not at the police station of Bulacao, Pardo requested Cesar Bacus to tell who shot your brother?
- A Before he was (not) arrested when he noticed us he shouted "Oy day kamo diay na Day, Oy unsa man intawon sala nako Day, Oy di man ako and nagpatay ni Roel, pero wa pa ako mosulti niya sir, nga gipusil niya ang akong manghud."^[22]

Accused-appellant, however, cites the following portions of Claros' testimony^[23] which he says "defies logic and ordinary human experience:"

- Q Did you not tell the court a while ago that when you verified, you saw your brother facing his back of (sic) the accused and the accused was (sic) kept on pulling the trigger but the gun did not fire?
- A Yes, sir.
- Q You were at a distance of 1 ½ or more or less 2 meters when you verified the two gun shots, is that correct?
- A Yes, sir.
- Q And you saw your brother his back facing the accused?
- A Yes, sir, my younger brother was playing a billiard game, this Cesar Bacus came to him pointing his gun on his head. (She said she was inside the house.)^[24]