

FIRST DIVISION

[G.R. No. 135196, July 31, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR MANSUETO, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE JR., C.J.:

Jacinto Pepito (hereafter JACINTO) lived at his mother's house in Liloan, Cebu with his son Jeovani and 17-year-old daughter Cleofe (hereafter CLEOFE). At around 8:25 p.m. on 26 October 1991, CLEOFE roused JACINTO from his sleep and informed him that a man outside the house was calling for him. JACINTO got up and went down the house. Downstairs, JACINTO saw the man who was standing outside the gate of the house. "Are you Jacinto?" the man asked. "Yes, I am Jacinto," JACINTO replied. Without warning, the man drew a gun and fired one shot at JACINTO.^[1]

The man tried to shoot JACINTO a second time but the gun would not fire. Summoning whatever strength was left in him, JACINTO reached out for his assailant. The man, however, hurriedly ran across the street to where a motorcycle was waiting. He boarded the motorcycle; he and the driver sped away. At that point, JACINTO's body lay on the ground lifeless.^[2]

The Police Medico-Legal Officer's "Necropsy Report"^[3] identified "hemorrhage, acute, severe, secondary to gunshot wound, of the chest" as the cause of JACINTO's death. The report states:

Gunshot wounds, ENTRANCE, ovaloid, 0.7 x 0.6 cm., with contuso-abraded collar widest supero-late-tally by 0.4 cm., edges inverted, chest, left anterior aspect, 3.0 cm. from the anterior median line and 138.0 cm. above left heel, directed backward, downward and medially, involving skin and the underlying soft tissues, into thoracic cavity, perforating the barta, lacerating the lower border of the lower lobe of the right lung and finally a .38 cal. slug was embedded and recovered underneath skin, back, thoracic region, right, 5.0 cm. from the posterior median line and 127.0 cm. above right heel.

The gunman was never brought to court to answer for his dastardly act. He remained at-large. The driver of the getaway motorcycle was identified at the investigation conducted by the police to be the accused-appellant, Oscar Mansueto (hereafter OSCAR). After the preliminary investigation, the investigating prosecutor filed on 11 November 1992 an Information^[4] for Murder with Branch 56 of the Regional Trial Court of Mandaue City. The Information reads as follows:

The undersigned accuses OSCAR MANSUETO and JOHN DOE whose description in the affidavit is as follows: 5'6" tall, medium built, dark complexion, with moustache, deep cheek, fierce eyes and wearing maong jacket and cloth hat with snap in front, of the crime of Murder, committed as follows:

That on the 26th day of October, 1991 at 8:00 o'clock in the evening, more or less, at Sitio Pagutlan, Barangay of Yati, Municipality of Liloan, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery and evident premeditation, with intent to kill, armed with a revolver, and with the use of motorcycle to ensure escape, willfully, unlawfully and feloniously, unexpectedly shot one Jacinto Pepito hitting the latter on his chest and afterwards, when enfeebled and unable to defend himself, again shoot him, but missed, and fatal gunshot wound of the victim causing his direct and immediate death.

CONTRARY TO LAW.

The case was docketed as Criminal Case No. DU-3235.

Upon arraignment OSCAR pleaded not guilty. Trial ensued.

The State's principal witness, CLEOFE, testified on the circumstances leading to the death of her father as already narrated.^[5] When asked whether she had "a good look (at) the man who was driving the motorcycle," CLEOFE said that she is "familiar with his face because (she) often see(s) him." She further explained that she had a good view of said driver for about five seconds as he and the gunman sped away. Besides, the place where the driver waited for the gunman was illuminated by the light coming from a nearby vulcanizing shop owned by one Arnold Hernandez. She then identified the driver of the motorcycle as OSCAR, whom she claimed was the paramour of her mother, Moisesa Pepito.^[6]

Another witness for the prosecution, Jose Pepito, a resident of Pag-utlan, Yati, Liloan, Cebu, testified that while he was at Myrna's store at Barangay Pitogo, Consolacion, Cebu at around 7:30 p.m. on the night in question, two persons on board a motorcycle stopped by the store. The two alighted and had some beer. Later, they left in the general direction of Liloan, Cebu. On his way home, Jose again saw the motorcycle along the roadside in Pag-utlan, near the vulcanizing shop of Arnold Hernandez. He then heard a shot and saw a man run towards the motorcycle to board it. He clearly saw the man and the driver of the motorcycle as they sped away because of the light from the electric post; moreover, he had seen them earlier at Myrna's store. He pointed to OSCAR as the motorcycle driver.^[7]

The prosecution also presented Dr. Jesus P. Cerna, the medico-legal officer, who identified and authenticated the Necropsy Report^[8] and the death certificate of JACINTO.^[9]

The defense interposed denial and alibi. Aside from OSCAR, the other witnesses presented by the defense were Patrolmen Absalom Andrino and Allan Tan of the Police Station of San Remegio, Cebu; Patrolman Arcelo Necostrato of the Police

Station of Liloan, Cebu; Moisesa Pepito; Judith Alesna; and Jeovani Pepito.

OSCAR disavowed participation in the killing of Jacinto. On the date and time in question, OSCAR claimed that he was at the poblacion of San Remegio, Cebu, which was about 90 kilometers away from the *locus criminis* - Liloan, Cebu. OSCAR's activities on the evening of 26 October 1991 started at 6:00 p.m. when he and Moisesa proceeded towards Alesna's *carenderia*. Along the way, they saw Patrolman Tan sitting at the police outpost nearby. They had supper at the *carinderia*. At 7:30 p.m., while Alesna and her husband left for church, OSCAR and Moisesa went to the second floor with Patrolman Andrino, who was renting a space thereat, to view a Betamax film. Later, Alesna and her husband arrived and joined the group. OSCAR and Moisesa left at around 11:00 p.m. Two days later or on 28 October 1991, his brother informed OSCAR that he was a suspect in the killing of JACINTO. On 31 October 1991, OSCAR went to the Liloan police station to attest to his presence at San Remegio, Cebu on the night of Jacinto's murder.^[10]

On cross-examination, OSCAR admitted that: the sidecar of his tricycle is detachable from the motorcycle; he was unsure on how far San Remegio is from Liloan; on the night in question, he began watching Betamax between 7:30 and 8:00 p.m.; he could not recall the titles of the Betamax films they viewed, but the first one starred Lito Lapid; he stayed for three (3) to four (4) hours at Andrino's place. He also claimed that he did not request Patrolman Andrino or Judith Alesna to go with him to the Liloan police station.

Moisesa Pepito, OSCAR's live-in partner and wife of JACINTO corroborated OSCAR's testimony. She maintained that both of them were at Judith Alesna's *carinderia* in San Remegio, Cebu before 7:00 p.m. on 26 October 1991. After eating, they went upstairs to Patrolman Andrino's place and watched a Betamax film. They left the place at around 11:00 p.m.^[11]

Judith Alesna, owner of the *carinderia* and Patrolman Andrino who rented a space above said *carinderia* also corroborated OSCAR's testimony regarding his whereabouts on the night in question.^[12]

Patrolman Allan Tan additionally attested to the presence of OSCAR in San Remegio on the fatal night when he saw the latter come out of the *carinderia* of Judith Alesna at about 8:00 p.m.^[13]

As for Patrolman Arselo Necostrato, he declared that he was the desk sergeant on duty when CLEOFE reported the shooting incident at the Liloan Police Station. He entered "author unknown person" in the police blotter since he could not establish, after interrogating CLEOFE, who JACINTO's assailant was.^[14] On cross-examination, Patrolman Necostrato clarified that he placed said entry since CLEOFE told him that JACINTO was "shot by a person whom she did not know and identify."^[15]

Jeovani, son of JACINTO and Moisesa, testified that his sister "was inside the fence of (their) house shouting" when their father was shot. He, on the other hand, ran to the side of the house and hid behind a stone. When the assailant left, he went outside the fence and saw his father "lying down." However, he did not see any motorcycle. In fact, he could not see anything because "it was dark" and "the light

on the post was not lighted."^[16]

On cross-examination, Jeovani admitted that his sister was nearer the gunman than he was since she was "immediately behind (their) father when he was shot."^[17]

After the defense presented its evidence-in-chief, the prosecution recalled CLEOFÉ to the witness stand as rebuttal witness. CLEOFÉ testified that OSCAR was not arrested at the Liloan police station when he ostentatiously submitted himself for interrogation "so that a surveillance (could) be made on his person" and the real killer known.^[18]

On 8 December 1995, the trial court promulgated its decision^[19] against OSCAR. The dispositive portion of the decision reads:

FOREGOING CONSIDERED, the Court finds Oscar Mansueto guilty of Murder, for having shot Jacinto Pepito in the evening of October 26, 1991 and, accordingly sentences him to serve the penalty of imprisonment ranging from SEVENTEEN (17) Years, FOUR (4) Months and One (1) Day to TWENTY (20) Years. He is also ordered to indemnify the heirs of Jacinto Pepito in the sum of TWO HUNDRED THOUSAND (P200,000.00) Pesos, to pay attorney's fees of TWENTY THOUSAND (P20,000.00) Pesos and to pay the costs.

SO ORDERED.

OSCAR appealed to the Court of Appeals which was docketed as CA-G.R. CR No. 19782.

On 15 June 1998, the Court of Appeals promulgated its Decision,^[20] the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING the trial court's decision subject to the MODIFICATION that accused-appellant is hereby sentenced to a penalty of RECLUSION PERPETUA. In view thereof, and in conformity with Rule 124, Section 13 of the Rules of Court, the Court refrains from entering judgment, certifies the case and elevates the entire records hereof to the Supreme Court for Review.

SO ORDERED.

Conformably with our policy in criminal cases certified by the Court of Appeals pursuant to Section 13 of Rule 124 of the Rules of Court, we required OSCAR in our Resolution of 5 December 1998 to file an additional Brief, if he is so minded. He did file an Appellant's Brief on 16 February 1999. He alleges therein that the Court of Appeals gravely erred in (1) holding that he conspired with an unknown person in the killing of JACINTO, (2) giving credence to the statements of witness CLEOFÉ immediately after the shooting incident as part of the *res gestae*, and (3) finding him guilty beyond reasonable doubt of the crime of murder.

The Office of the Solicitor General filed the Appellee's Brief on 25 August 1999. It urges us to affirm the challenged decision of the Court of Appeals, except as to the

indemnity which it proposed reduced to P50,000.

At the outset, it must be stated that unless the prosecution proves the guilt of the accused in a criminal suit beyond reasonable doubt, the constitutional presumption of innocence applies and the accused must be acquitted. Even though an accused invokes the inherently weak defense of alibi, such defense acquires commensurate strength where no positive and proper identification has been made by the prosecution witnesses, as the prosecution still has the *onus probandi* in establishing the guilt of the accused.^[21]

Before we can apply the rule that positive identification prevails over mere denial and alibi, it is necessary that the credibility of the eyewitness be first put beyond question. This Court has always recognized that the trial courts are best equipped to pass upon the credibility of witnesses, having had the opportunity to observe firsthand the demeanor and actuations of the witness while on the witness stand.

^[22] The matter of assigning values to declarations at the witness stand is most competently carried out by the trial judge who, unlike appellate judges, can weigh such testimony in light of the witness's behavior and attitude at the trial, and the conclusions of the trial judge command great weight and respect.^[23] We see no cogent reason to depart from this rule.

The trial court believed CLEOFE and found her to be a credible witness when she testified that OSCAR was the driver of the getaway motorcycle. In its decision, the trial court stated that:

On the other hand, the identification by witness, Cleofe Pepito of the accused as the motorcycle driver, who was waiting in the wings to facilitate the escape of the gunman was never destroyed by the defense. In fact, in answer to the question of private prosecutor whether witness Cleofe Pepito had a good look at the man who was driving the motorcycle, her answer was a definite yes, and when she was asked as to why she was definite, her answer was that she was familiar with his face because she had often seen him. Later on, as records show, this witness was able to explain her familiarity and it was the result of having been instructed by her mother to collect accounts supposedly due her mother from the accused...^[24]

OSCAR, however, argues in his Appellant's Brief that CLEOFE could not have recognized him as the driver of the motorcycle during the five (5) seconds that she claimed to have glanced at him and the gunman while fleeing. OSCAR claims that (1) CLEOFE's view of the driver was obstructed by the gunman, who boarded the motorcycle behind the driver; (2) CLEOFE was facing the backs of the driver and the gunman as they sped off towards Cebu City; and that (3) there was no light from the lamppost. He cited CLEOFE's testimony as follows:

Atty. Alo:

Q: My question is, when you saw the motorcycle for a period of five (5) seconds the situation in the motorcycle was that, the rider was there already behind the driver?

A: Yes, he was already there.