

SECOND DIVISION

[G.R. No. 134245, December 01, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY CIRILO, ACCUSED-APPELLANT.

DECISION

DE LEON, JR., J.:

For review is the Decision^[1] dated May 27, 1998 of the Court of Appeals, Special First Division, affirming the Decision^[2] of the Regional Trial Court of Iloilo City, Branch 28, convicting herein appellant, Gerry Cirilo, of the crime of murder.

Gerry Cirilo was charged with the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, in an Information that reads:

That on or about November 30, 1990, in the Municipality of Passi, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a homemade shotgun locally known as "pugakhang", with treachery and evident premeditation and with a decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot one Efren Dableo with said weapon with which he was then provided, hitting and inflicting upon the latter gunshot wounds on the vital parts of his body which caused his instantaneous death thereafter.

Contrary to law.^[3]

On May 31, 1991, appellant was released on bail upon an order granting his motion for admission to bail.

Upon being arraigned on June 24, 1991, appellant Gerry Cirilo, assisted by counsel, pleaded "Not Guilty" to the charge as contained in the Information in this case.

The evidence of the prosecution shows that on November 30, 1990, at around 7:20 o'clock in the evening, Lorna Panes together with Alicia Diaz and Efren Dableo was outside her house in Barangay Bitagan, Passi, Iloilo. Panes was in front of Diaz while Dableo was at her right side. At a distance of about one and one half (1 ½) to two (2) meters from her left, appellant Gerry Cirilo appeared in a squatting position and aiming a shotgun at them. She had a clear view of appellant's face inasmuch as she was holding a kerosene torch ("mitsa"). Appellant warned them not to shout, or he would kill them.^[4] Appellant then attempted to enter her house through the kitchen door while she stopped upon hearing a gunshot. She saw the victim, Efren Dableo, bleeding just below his chest but she could not seek help for

the reason that appellant was menacingly pointing his gun at her. Her relatives arrived after Cirilo fled through the fence and at that point of time Dableo was already dead.^[5]

On the same evening, the barangay captain of Barangay Bitaoogan and Barangay Councilman Eddie Andador investigated the shooting incident. For fear of her life, Panes did not reveal to them the identity of the assailant. On the following day, the police came to investigate. However, Panes was not in her house. She revealed the identity of the appellant as the person who killed Dableo only to her father-in-law, Manuel Panes.^[6]

Two weeks after the shooting incident, Alicia Diaz and Lorna Panes executed their sworn statements at the Philippine National Police Station in Passi, Iloilo. They disclosed before the police that the appellant, Gerry Cirilo, was the person who shot Efren Dableo. Subsequently, Panes sold their house and transferred to Barangay Mapili, San Enrique, Iloilo due to rumors that the appellant, who remained at large, would kill them.^[7]

Police Officer 3 Abelardo Puljanan together with other policemen of the Passi, Iloilo Police missed Lorna Panes when they went to Barangay Bitaoogan on December 1, 1990 to interrogate her. They were able to interrogate her husband and other relatives who denied any knowledge of the identity of the assailant.^[8]

Barangay Councilman Eddie Andador of Barangay Bitaoogan, testified that the family of Lorna Panes slept in Andador's house after the shooting incident for the reason that they feared the assailant might return to kill them. They denied any knowledge of the identity of the person who shot Efren Dableo. Andador admitted that he helped the father of appellant Cirilo to look for a bail bond for the provisional liberty of the latter.^[9]

Dr. Leonardo Deza, M.D., conducted the autopsy on the body of the deceased, Efren Dableo. His findings showed that the cause of death was hemorrhage secondary to gunshot wounds.^[10]

The other prosecution witness, Alicia Diaz, was not able to testify inasmuch as she died before the trial of the case started.^[11]

For his defense, appellant Gerry Cirilo testified that he was a resident of Barangay Bitaoogan, Passi, Iloilo. From May 1990 up to the time of his arrest on May 1991, he worked as guard of the bodega located near the house of a certain Felipe Pacino in Barangay Bitaoogan, Passi, Iloilo. On the night of the shooting incident, he was within the vicinity of the Felipe Pacino's house while he was guarding the bodega. He arrived at about 5:30 o'clock in the afternoon and left at 7:00 o'clock in the morning of the following day. He came to know that Efren Dableo was shot to death from a certain Adelino only in the morning of December 1, 1990.^[12] In the afternoon of that same day, the police requested him to proceed to the scene of the crime together with eight (8) other persons. He learned that the suspect was not yet identified. However, in May 1991, the appellant was arrested for the killing of Efren Dableo.^[13]

Felipe Pacino, the alleged employer of appellant, testified that he was an overseer of the Thomas Ford's estate. His house is located in Barangay Bitagan, Passi, Iloilo. He had hired appellant to work as a guard in his bodega that contains fertilizers. Appellant worked from 5:30 o'clock in the afternoon until the morning of the following day. On November 30, 1990 at about 7:00 o'clock in the evening, he saw appellant guarding his bodega. At around 7:30 o'clock in the evening, appellant ate dinner with his family. He learned about the shooting incident on the next day from Adelino Lamit. After appellant's arrest, Pacino helped him look for bail.^[14]

After weighing the evidence, the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, DECISION is hereby rendered , finding the accused, Gerry Cirilo, GUILTY, beyond reasonable doubt, of the crime, of Murder, as charged, in the aforequoted information.

Considering that at the time of the commission of the offense, the death penalty has been abolished by the Cory Constitution, and not yet reinstated by the legislative, the aforementioned accused, is hereby sentenced, to suffer indeterminate penalty of imprisonment, ranging from 14 years, 8 months, and one day, as minimum, to 17 years, 4 months and 1 day, Reclusion Temporal, as maximum, to indemnify the heirs of the late Efren Dableo, in the amount of P50,000.00 and to pay the cost.

SO ORDERED.^[15]

On February 28, 1995, the trial court ordered the cancellation of appellant's bail bond and his detention at the Iloilo Rehabilitation Center. On March 14, 1995, appellant Gerry Cirilo appealed the decision of the trial court to the Court of Appeals.

In his appeal to the Court of Appeals, the appellant raised the following assignment of errors:

I

The testimony of lone prosecution witness Lorna Panes is uncorroborated, inconsistent (with itself and with the evidence), wavering and vacillating, hence, the lower court was in error in giving it full faith and credence, and in considering it as sufficient to convict the appellant of the crime of Murder.

II

The lower court erred in shifting the burden of proof from the prosecution to the defense when, without scrutinizing the evidence of the prosecution, it concluded that the offense charged was committed because the alibi of the accused is a weak defense, and this is contrary

to the doctrine in *People vs. Abores* that the rule that the alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases, and that in *People vs. Jorge* that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.

III

The lower court erred in finding appellant guilty beyond reasonable doubt of the crime of Murder when the prosecution has failed to sufficiently establish his guilt, especially the alleged qualifying aggravating circumstances which are without basis in the facts and in the evidence."

[16]

Upon motion for admission to bail filed by the appellant, the Court of Appeals allowed him to post bail pending appeal. On March 29, 1995, the trial court approved the bail bond and ordered the Provincial Warden of Iloilo City to release the appellant. After the submission of pleadings by the parties, the appellate court on May 27, 1998 promulgated a decision, the dispositive portion of which reads:

WHEREFORE, the appealed decision is hereby AFFIRMED with the modification that the imposable penalty should be *Reclusion Perpetua*, there being neither mitigating nor aggravating circumstances attending the crime.

In conformity with the ruling of the Supreme Court in *People vs. Saldivia* (203 SCRA 461, 464-65) and *People vs. Cruz* (203 SCRA 682, 698), the Division Clerk of Court is hereby ORDERED TO REFRAIN FROM ENTERING JUDGMENT and TO ELEVATE the records of this case to the Supreme Court for review, pursuant to Section 13, Rule 124 of the Revised Rules of Court.

The bail bond on appeal posted by the accused (pp. 178-181, Record), which is contrary to the directive of the Supreme Court in Administrative Circular 12-94, is cancelled. Let a warrant immediately issue for the arrest of the accused and his detention at the National Penitentiary until the final disposition of this case.

SO ORDERED.[17]

This case was elevated to this Court by virtue of the second paragraph of Section 13, Rule 124 of the Rules of Court which provides that:

Section 13. *Quorum of the Court.* xxx

Whenever the Court of Appeals should be of the opinion that the penalty of *reclusion perpetua* or higher should be imposed in a case, the Court after discussion of the evidence and the law involved shall render judgment imposing the penalty of *reclusion perpetua* or higher as the

circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

Upon receipt of a certification that appellant has no record of confinement in the Bureau of Corrections in Muntinlupa City, this Court rendered a resolution dated July 7, 1999 ordering the bondsmen to inform the Court within ten (10) days from notice of the fact of surrender and that, in case of non-surrender within ten (10) days from notice, his arrest shall be ordered. The bondsmen failed to make a reply. On June 26, 2000, we required the counsel of the said bondsmen to inform the Court of the whereabouts of the appellant. Up to the present, the appellant cannot be located and appeared to have jumped bail.

We affirm the decision of the Court of Appeals convicting the appellant of the crime of murder. Appellant was positively identified by eyewitness Lorna Panes as the person who shot to death Efren Dableo. She testified that during the night of the shooting incident the kerosene torch that she was holding illuminated the face of the appellant who was then aiming a shotgun at them.

Appellant cannot successfully impeach the credibility of Lorna Panes by simply pointing out the discrepancy in her affidavit and her testimony during the trial to the effect that her testimony mentions the kerosene torch as a means of illumination while her affidavit states that she saw appellant due to the bright moon. Under Section 13, Rule 132 of the Rules of Court, it is provided that:

Sec. 13. How witness impeached by evidence of inconsistent statements. Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

The records do not show that during the trial the defense properly laid the predicate to impeach the credibility of prosecution witness Lorna Panes. The inconsistency was only pointed out in the appellant's brief. When a witness is not given an ample opportunity to explain the discrepancies in a declaration earlier made and her testimony in court, her impeachment is inadequate.^[18]

In any event, this Court has ruled that discrepancies between the affidavit of a witness and his testimony in court do not necessarily discredit the witness because it is a matter of judicial experience that affidavits, being taken *ex-parte*, are almost always incomplete and often inaccurate. Besides, the testimonial discrepancies could have been caused by the natural fickleness of memory, which tends to strengthen, rather than weaken credibility as they erase any suspicion of rehearsed testimony.^[19]

Appellant contends that prosecution witness Lorna Panes contradicted herself on