

FIRST DIVISION

[G.R. No. 130550, September 02, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANDRES PEÑAFLORIDA, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., C.J.:

Accused-appellant Andres Peñaflorida (hereafter ANDRES) appeals from the decision^[1] of the Regional Trial Court (RTC), Branch 19, Malolos, Bulacan, in Criminal Case No. 2683-M-94, dated 12 May 1997, finding him guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and indemnify the heirs of the victim, SPO3 Eusebio Natividad, in the amount of P50,000.

The information,^[2] filed on 13 October 1994, charged ANDRES together with two other persons, whose identities are still unknown, with murder, allegedly committed in this manner:

That on or about the 5th day of October, 1994, in the municipality of San Ildefonso, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with two (2) other persons, whose true names are still unknown and against whom the preliminary investigation has not yet been completed by the Office of the Provincial Prosecutor of Bulacan, armed with guns, and with intent to kill one SPO3 Eusebio Natividad, conspiring, confederating together and mutually helping one another did then and there wilfully, unlawfully and feloniously, with treachery, evident premeditation and use of superior strength, attack, assault and shoot with guns the said SPO3 Eusebio Natividad, hitting him on different parts of his body, thereby inflicting upon him mortal wounds which directly caused death.

ANDRES pleaded not guilty upon arraignment.^[3]

At the trial, the prosecution presented its eyewitness, Rodolfo de la Cruz (hereafter RODOLFO). He testified that at around 4:00 p.m. on 5 October 1994, he was resting on the terrace of his house at Pinaod, San Ildefonso, Bulacan, when he noticed an oncoming owner-type jeep. On board were the driver SPO3 Eusebio Natividad, RODOLFO's former CAGU trainer and an unknown companion passenger. Suddenly, three men, each armed with a short pistol, blocked and stopped the jeep. One of the three armed men shouted: "*Natividad katapusan mo na ito,*" (Natividad, this is your end). After which, the three gunmen simultaneously fired upon Natividad. When the assault ceased, one of the gunmen took Natividad's wallet and gun. The attackers then fled on board a vehicle.^[4]

RODOLFO claimed that the killing took place in a small market (*talipapa*) about five

armslength from his terrace, hence, he was able to see clearly the faces of Natividad's assailants.^[5]

RODOLFO also recounted that seven days after the shooting incident or on 12 October 1994, he voluntarily proceeded to the 175th PC Detachment upon the invitation of the police authorities who were conducting the investigation on the matter. There, the police officers presented a man whom RODOLFO instantly recognized as one of NATIVIDAD's assailants, in particular, the one who took Natividad's gun and wallet. The police then informed RODOLFO that the man's name was ANDRES Peñaflorida. Armed with the name to match one of the faces he remembered as one of Natividad's attackers, RODOLFO voluntarily and promptly executed on that same day, a sworn statement narrating the events pertaining to the attack.^[6] In open court, RODOLFO once again specifically pointed to ANDRES as one of the assailants of Natividad who seized the latter's gun and wallet.^[7]

After RODOLFO's testimony, the prosecution formally offered in evidence his aforementioned sworn statement as Exhibit "A" and Exhibit "A-1."^[8] It also offered in evidence the death certificate of Natividad as Exhibit "B,"^[9] which indicated that the cause of his death was massive hemorrhage due to multiple gunshot wounds. The defense raised no objections and admitted the exhibits. The prosecution then rested its case.^[10]

The defense thereafter presented its witnesses ANDRES and his brother, Roberto Peñaflorida. ANDRES interposed alibi. He claimed that at around 4:30 p.m., on 5 October 1994, he was in the house of his brother, Roberto in Marulas, Bulacan where he assisted the latter in the repair of the chassis of some automobiles. He did not leave Marulas that day hence, he could not be physically present in some other place, much less in San Ildefonso. He left Marulas only on 11 October 1994 upon his cousin's request to harvest palay at Sapang Palay. He was arrested on said date.^[11]

ANDRES further denied ever knowing both Natividad and RODOLFO. Natividad certainly was not his enemy hence, ANDRES could not think of any reason why RODOLFO implicated him in the killing of Natividad.^[12]

Roberto Peñaflorida corroborated the alibi of ANDRES. He maintained that he was working with ANDRES the whole day of 5 October 1994 in the repair of a Motherland bus. Roberto further declared that ANDRES had been living with him since December, 1993. There had been no occasion for ANDRES to leave Marulas except on 11 October 1994 when he was invited by a friend to go to San Ildefonso. A week later, Roberto learned that ANDRES had been arrested.^[13]

The trial court considered said evidence of the defense as unworthy of belief. It instead gave full faith and credit to the evidence of the prosecution, particularly the testimony of the lone prosecution witness RODOLFO. It is convinced that RODOLFO positively identified ANDRES as one of the culprits who, using a short firearm, riddled the different parts of Natividad's body with bullets that led to his untimely demise. It assessed the testimony of RODOLFO as "clear, unequivocal, unmistakable and overwhelming leaving no room for doubt as to its veracity and conclusiveness."^[14] The trial court then reiterated in its decision, the jurisprudential doctrine that RODOLFO's positive identification prevails over the uncorroborated and self-serving

denial and alibi interposed by the defense.^[15]

The trial court also appreciated that treachery, evident premeditation and abuse of superior strength attended the killing of Natividad. It then convicted ANDRES of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Natividad in the amount of P50,000. The dispositive portion of the decision^[16] reads, as follows:

Wherefore, based on the evidence on record, this Court finds the accused, ANDRES PEÑAFLOIDA, GUILTY beyond reasonable doubt of the crime of MURDER punishable under Art. 248 of the Revised Penal Code, the killing having been attended with aggravating circumstances of alevosia, evident premeditation and abuse of superior strength, and hereby sentences him to suffer the penalty of *reclusion perpetua* with the accessory penalties provided by law and to indemnify the heirs of SPO3 Eusebio Natividad the sum of P50,000.00 and to pay the costs.

ANDRES seasonably appealed from the decision. In his Appellant's Brief, ANDRES contends that the trial court erred in convicting him since he was not positively identified by RODOLFO. There was no positive identification because (a) RODOLFO could not have remembered the physical features of the three (3) gunmen, particularly ANDRES, given the short time that he (RODOLFO) had seen them and that previous to the incident he did not know any one of them;^[17] (b) RODOLFO did not identify ANDRES from a police line-up but was introduced to him (RODOLFO) alone;^[18] and (c) RODOLFO belatedly executed the sworn statement (Exhibit "A" and Exhibit "A-1"), albeit seven days after the shooting incident. With this, ANDRES insinuates that the police authorities "coached" RODOLFO in the identification for he executed the sworn statement, propitiously on 12 October 1994, a day after ANDRES' arrest. ANDRES additionally points out that he was arrested not by virtue of a warrant of arrest but upon mere invitation by a certain police officer Palarca who brought him immediately to the 175th PC Detachment.^[19]

In its Appellee's Brief, the Office of the Solicitor General supports the trial court's decision and prays that the assailed decision be affirmed *in toto*.

The appeal is without merit.

Well settled is the rule that the ascertainment of the credibility of witnesses is best left to the determination of the trial court. This is so because the trial court is in a distinct advantageous position to examine the witnesses' deportment and manner of testifying. On appeal, its evaluation or assessment of the testimonies of witnesses is accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence which, if considered, would alter the results of the case.^[20]

In this case, no cogent reasons were presented to disturb the factual findings of the trial court particularly on the assessment of the credibility of the prosecution eyewitness. The trial court ascertained that RODOLFO "categorically, unequivocally and repeatedly pointed to" ANDRES as one of the three armed men who ambushed and gunned down Natividad. It declared that RODOLFO positively identified ANDRES. We agree.

RODOLFO had all the opportunity to observe the horrible occurrence as he was only about five armslength from the scene of the crime. He had a good view of the assailants' physical and facial features. True, he had seen their faces for only a short span of time but that was all RODOLFO needed in order to remember their faces. Even if he did not know any one of the assailants previous to the incident, such a fact would not deter RODOLFO from remembering them. In fact, RODOLFO was so certain of the attackers' faces that he easily and quickly recognized ANDRES as one of them when he saw the latter at the 175th PC Detachment. It is therefore unnecessary for RODOLFO to have identified ANDRES from the police line-up. Besides, there is no law requiring a police line-up as an essential requisite for proper identification.^[21] Further, no proof was adduced indicating that RODOLFO was coached by the police officers or improperly motivated in identifying ANDRES as one of Natividad's slayers.

As to the alleged delay in the execution of RODOLFO's sworn statement, it does not and will not impair his credibility as witness. This Court takes judicial notice of the actuality that witnesses in this country are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations.^[22] Indeed, RODOLFO exhibited a natural human reaction. Although there was delay in the execution of his sworn statement, what matters is RODOLFO overcame his initial reluctance and fear to be involved by voluntarily participating in the police investigation and then openly testifying in court.

In sum, RODOLFO's positive identification of ANDRES as one of the authors of the crime prevails over his defense of alibi.^[23] Settled is the rule that alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove.^[24] For such a defense to prosper, it is not enough for ANDRES to prove that he was somewhere else when the crime occurred, i.e., at Marulas, Bulacan but he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at San Ildefonso, Bulacan, at the time of its commission.^[25] This, ANDRES failed to establish.

We will now discuss the trial court's assessment that all the aggravating circumstances alleged in the information attended the commission of the crime. We approve the trial court's correct appreciation of *alevosia*, but disapprove its determination of evident premeditation and abuse of superior strength.

For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.^[26]

Natividad's assailants unexpectedly appeared from nowhere to ambush him. The assailants were able to immediately establish strategic positions from which vantage point they simultaneously fired upon the victim, taking him by surprise. The stratagem ensured Natividad's helplessness, defenselessness and immobility. Thus, it can be said that ANDRES and his two (2) still unknown companions employed means of execution which gave Natividad no opportunity at all to defend himself and that the manner of execution was deliberately and consciously adopted. The fact that the attack was preceded by a cry or signal of "*Natividad katapusan mo na ito,*"