

SECOND DIVISION

[G.R. No. 121793, June 30, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ADONIS BALAD, ACCUSED-APPELLANT.**

D E C I S I O N

REGALADO, J.:

On October 26, 1992, Wenceslao Doctolero, a passenger in a jeep parked at Kayang Street, Baguio City, was shot at the nape resulting in his instantaneous death. On November 12, 1992, an information for murder, alleged to have been committed with treachery and evident premeditation, was filed and docketed as Criminal Case No. 10719-R in the Regional Trial Court, Branch 4, at Baguio City, against accused-appellant Adonis Balad, a police officer.^[1]

On May 19, 1995, the trial court rendered judgment finding herein appellant guilty of the crime charged, for which he was meted the penalty of reclusion perpetua and ordered to pay the heirs of the victim the sum of P50,000.00 as death indemnity; P35,000.00 as reimbursement of expenses for his coffin and funeral wake for nine days; P265,761.00 for loss of his expected earnings for three years; P50,000.00 for moral damages; and P25,000.00 as exemplary damages, with costs.^[2]

Appellant interposed the present appeal, alleging inter alia by way of assignment of errors that the court a quo was mistaken in basing its findings on (1) conflicting facts presented by the prosecution, one consistent with appellant's innocence and the other indicative of his guilt; (2) misapprehension of facts by relying heavily on the prosecution's evidence against appellant despite glaring substantial defects; and (3) prosecution evidence of guilt which was contrived.^[3] At bottom, the matter of the identification of appellant as the assailant is the pervading issue.

The prosecution's version of the facts of the case is anchored on the testimony of one of the principal eyewitnesses, Edwin Sabalbuero. Considering its paramount role in the case for the People, as shown by the determined onslaught against it by the defense, we will quote the pertinent significant portions thereof somewhat at length:

Q. On the afternoon of October 26, 1992, do you remember where you were and where you went?

A. Yes, sir.

Q. Where did you go and where were you?

A. I was then at Kayang Street, Baguio City.

Q. Where did you come from before you went to Kayang Street?

A. We came from Burnham Park that afternoon.

Q. You said 'we' who were your companions?

A. Charlie Lim and Jerry Marcelo.

Q. Why did you go to Kayang Street from Burnham Park that afternoon?

A. We were about to go home.

Q. About what time was it?

A. 4:30 sir.

Q. In the morning or afternoon?

A. In the afternoon sir.

Q. When you were at Kayang Street bound for home at Dominican Hill, did you notice anything unusual that happened that afternoon?

A. There was sir.

Q. Will you tell this Honorable Court what is that unusual incident that happened?

A. There was a gunshot.

Q. How many gunshots did you hear?

A. There were two (2).

Q. Did you notice where the first gunshot came from?

A. No, sir.

Q. Now, you said there were two (2) gunshots. After that first gunshot, how many seconds or minutes lapsed before you heard the second gunshot?

A. More or less five (5) minutes.

Q. And what did you do when you heard that second gunshot?

A. I hid myself but just the same I saw what happened.

Q. You hid yourself with what?

A. Near the vehicle.

Q. You said you hid yourself, but you saw something that happened. What did you see that happened?

A. I saw somebody shot, sir.

Q. And where was that somebody who was shot that you saw.

A. There at the parking place bound for Fairview.

Q. Where was he at the time that you saw him shot?

A. He was inside the vehicle.

Q. What kind of a vehicle?

A. Jeep bound for Fairview.

Q. Was that jeep bound for Fairview where the person shot was, moving or parked?

A. It was parked.

Q. And when you saw that person who was shot at sitting in the jeep parked, did you see who shot him?

A. Yes, sir.

Q. And did you recognize that person who fired a shot?

A. Yes, sir.

Q. If he is in this court room now, will you please point at him, the one who fired a shot?

A. (Interpreter: Witness now points to a man seated in the courtroom with green jacket, who, when asked, stood up and gave his name as Adonis Balad, the accused in this case.)

Q. How do you know that this person you have just pointed at in the courtroom was the one whom you saw fire a gun at the man inside the jeep?

A. He was the one holding the gun.

Q. And do you know if the person who was seated in the jeep was hit with the shot?

A. Yes, sir.

Q. And did you notice what part of the body of that person in the jeep was hit with the shot?

A. Here, sir.

(Interpreter: Witness pointing to the left side of his neck below his left ear.)

Q. And where was this person you had just identified before this Honorable Court situated or where was he when he fired a shot, when you say he fired a shot in relation to the person who was shot?

A. At his back.

Q. Let us make this straight. The man who shot was at the back of whom?

COURT: He was at the back of the victim?

Q. Back of whom?

A. At the back of the one who was shot.

Q. Can you show to this Honorable Court, in the courtroom, the distance, if you can estimate, your distance to the place where Mr. Doctolero was shot?

A. (Interpreter: Witness estimating a distance of about 7 to 8 meters.)

Q. At the distance you have just indicated before this Honorable Court, should you have seen clearly the face of the person who fired a gun at Engineer Doctolero?

A. Yes, sir.

Q. Was there anything that could have hidden the person whom you saw fired a shot at Engineer Doctolero where you were with your companions?

A. None, sir.

Q. And what did Mr. Balad whom you have just identified before this Honorable Court do after he fired the shot at Engineer Doctolero?

A. He walked casually as if nothing happened.

Q. Was Mr. Balad outside or inside the jeep when he fired a shot?

A. He was outside.

Q. And how far away was Mr. Balad at that time when he fired a shot at Engineer Doctolero?

A. Very near, sir, because he pointed his gun at the nape, point blank.

Q. And you said that Mr. Balad after firing the shot, just walked casually as if nothing happened. Where did he go?

A. He went down Abanao Street.^[4]

This eyewitness was firm and categorical in his testimony during the cross-examination and remained unshaken and consistent in his answers, thus:

Q. And from where you were, you clearly saw Balad holding a gun?

A. Yes, sir.

Q. And Balad was at the back of the jeepney on the right side?

A. Yes, sir.

Q. Now, from where you said earlier that there was no obstruction. You saw Balad holding a firearm and shot the victim?

A. Yes, sir.

Q. Let us be clear on this, Mr. Witness, from where you were standing to where Balad was, was he on the higher plain or a lower plain or immediately parallel to you?

A. He was right opposite me, directly in front of me."^[5]

Edwin Sabalburo further testified that appellant was wearing a camouflage jacket and that the firearm he used was a short gun. The witness ramified that after appellant shot Doctolero, the victim fell down on the floor of the jeepney while appellant on his part, casually walked away towards Abanao Street.^[6]

The testimony of this principal prosecution witness was corroborated by one of his companions, Charlie Lim, who testified^[7] that in the afternoon of October 26, 1992, he was with Edwin Sabalburo at the jeepney station on Kayang Street while waiting for a jeepney bound for Dominican Hill in Baguio City. Suddenly, he noticed people scampering away and then he heard two gunshots. He was not aware where the

first gunshot came from but he saw where and when the second shot was fired.

He declared that he heard the first gunshot at around 4:25 in the afternoon and the second gunshot at around 4:30, or after an interval of about five minutes. He affirmed that the second gunshot was fired towards the jeepney station for Fairview, Baguio City, just opposite the place where he was standing at Kayang Street. His initial reaction after hearing the first shot was to hide behind a parked jeepney, but his attention was directed to the place where and when the second shot was fired. It was then that he saw a person holding a gun and shooting someone inside the parked jeep bound for Fairview.

He further stated that he was just about seven strides away from the spot where the person holding the gun shot the passenger of the jeepney who, at that time, had his back turned away from the gunman. When he was asked in open court if he could identify the gunman, he stepped down and touched the left shoulder of appellant Adonis Balad.^[8]

The prosecution also presented Dr. Emmanuel Fernandez, medico-legal officer of the Baguio Health Department, who examined the body of the victim, and this doctor explained that the point of entry was at the nape, or back of the skull; he traced the trajectory of the bullet in relation to the basal skull fractures and cranial vaults which it damaged; and explained that the death of the victim was instantaneous since the brain stem and the medulla oblongata were penetrated.^[9]

The defense of appellant is founded upon alibi, but so replete with details that we have decided to likewise quote the significant portions from the painstaking summary thereof by the trial court, under the same token that we did so with the testimony of the principal witness for the prosecution, so that appellant's submissions may equally be ventilated and assayed.

"According to the evidence of the defense, the accused, a Baguio City policeman since September 15, 1987 was, on October 26, 1992 and thereabouts assigned in Sub-station No. 6 of the Baguio City Police, at Aurora Hill, Baguio City. His tour of duty on October 26, 1992 was from 8 o'clock in the morning to 4 o'clock in the afternoon. He did not however report for duty that day because he asked permission from his commanding officer so he could secure the necessary papers to support his application to take the Board Examination in Criminology which was then forthcoming.

At 9 o'clock in the morning that day, while he was going to the City Hall of Baguio, on his way to get the necessary clearances thereat, he met Joepet Sawilan, a friend in high school days. The accused asked Sawilan to wait for him so they would go together after he (the accused) could have secured these clearances. When the accused had secured the needed court clearance from the City Hall at 9:30 o'clock that morning he and Sawilan went to Kayang Street as accused wanted to look for a friend at First Kayang Street. While the accused and Sawilan were standing in front of the 5-Star Fast Food and Restaurant located at the groundfloor of Albger Building, the accused noticed that there were people going up and down its stairs. He went up the stairs and Sawilan followed him, five (5) meters behind.

While on the stairs going up, a person blocked him. The accused asked this person