

ELEVENTH DIVISION

[CA-G.R. CR-H.C. NO. 04727, January 20, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JEREMIAS DY Y RACE, ACCUSED-APPELLANT.**

DECISION

SADANG, J.:

Accused-appellant Jeremias Dy y Race appeals from the June 2, 2010 Decision^[1] of the Regional Trial Court of Masbate City, Branch 44, in Criminal Case No. 9627, convicting him of the crime of murder defined and punished under Article 248 of the Revised Penal Code.

Antecedents of the Appeal

On May 30, 2000, accused-appellant Jeremias Dy y Race (hereafter, appellant) was charged, together with Rudy Vargas, with murder. The Information^[2] reads:

That on or about January 16, 2000 at 6:00 o'clock in the afternoon thereof, at Sitio Samoyao, Brgy. Panique, Municipality of Aroroy, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, conspiring together and mutually helping one another with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shot [sic] one Eliminio Rase y Barbalino with a homemade gun locally known as "Riot", hitting the latter on the chest which caused his immediate death.

CONTRARY TO LAW.

The case was initially archived in February 2001 for failure of the authorities to arrest appellant and Vargas but was revived after over five years with the arrest of appellant. On October 4, 2005, appellant entered a not guilty plea upon his arraignment with the assistance of a counsel *de parte*.^[3] Vargas remains at large.^[4]

After the pre-trial^[5] on January 24, 2006, trial ensued.

The prosecution presented five witnesses, viz: Cornelia Rase (Cornelia), widow of the victim Eliminio, Gabriel Rase (Gabriel) and Jonathan Rase (Jonathan), sons of Cornelia and Elimino, then 11 and 9 years old, respectively; Ruben Rase (Ruben), Eliminio's brother; and Dr. Marilou Hernandez, Municipal Health Officer of Aroroy, Masbate. The defense presented two witnesses: appellant and PO1 Gil Llenares.

Version of the Prosecution

Just as the sun was setting at around 6 PM of January 16, 2000, Eliminio Race was grating coconut on the porch of his house in Sitio Samoyao, Barangay Panique, Aroroy, Masbate. Gathered around him were his five children, Gabriel, Jonathan, Mary Ann, Agustin, and Junior. His wife Cornelia was in the kitchen, some ten meters away, washing and preparing *gabi* to be cooked with coconut for the family supper. Suddenly, appellant, Eliminio's nephew^[6] who has been known to Jonathan and Gabriel as "Manoy Bong" from their early childhood, appeared, armed with a homemade gun locally known as *riot*. Gabriel and Jonathan easily recognized appellant by the light of the setting sun and the gas lamp in the porch. From a distance of less than two meters, appellant shot Eliminio, hitting him on the right chest. Gabriel was only one and a half meters away from Eliminio while Jonathan was right in front of him. After shooting Eliminio, appellant casually walked away and headed towards Ruben's house. Eliminio fell and laid prostrate on the ground, he died instantaneously. Cornelia, who heard the gunshot, ran towards the porch and she saw the lifeless body of Eliminio. Gabriel and Jonathan embraced Eliminio and cried, telling Cornelia that "Manoy Bong" shot their father. The two boys pleaded that they flee the place because appellant had told them that he will get more bullets and return for them.^[7]

Ruben, who was in his house near the fishpond some two hundred meters away, also heard the gunshot. About five minutes later, he sighted appellant walking towards his house. Appellant pounded his gun on the wall of the house and summoned Ruben to come out. At that moment, Gabriel heard shouts coming from Ruben's house. Ruben, fearing for his life and the lives of his wife and daughter who were with him, stayed inside the house and kept quiet so as not to cause any commotion. In a short while, appellant left and headed to the fishpond dike. About ten minutes later, certain that appellant was no longer in the vicinity, Ruben and his family fled their home and sought refuge in the house of his nephew in Sitio Buri, Barangay Puro, in fear that appellant would return to kill them.^[8]

Meanwhile, Cornelia and her children hastened to the house of Eliminio's mother, Ida Rase, which was not far away. Cornelia told Ida that Eliminio had been shot by appellant. She left her children with Ida and went to the Aroroy, Masbate Police Station. She reported the shooting of Eliminio and told the police that her children identified appellant as the assailant. Upon Cornelia's request, the policemen went to the house and they saw Eliminio's body still sprawled on the ground. The policemen laid Eliminio's body on a wooden table and conducted an investigation. Cornelia, Gabriel and Jonathan narrated the circumstances of Eliminio's death and identified appellant as the perpetrator.^[9] Eliminio's remains were then brought to the house of his brother Patricio Rase in Barangay Panique, Aroroy, Masbate. The next day, January 17, 2000, Ruben went to Patricio's house. Eliminio's children told Ruben that appellant shot their father.^[10]

Dr. Marilou Hernandez conducted a post-mortem examination which showed that Eliminio sustained a single gunshot wound on his right clavicular area, one (1) inch in width, two (2) inches in length, and eight (8) inches in depth, with gunpowder burns. Dr. Hernandez concluded that the gunpowder burns indicate the probability of short range firing. She assessed the gunshot wound to be fatal as it most likely hit the heart. She stated that no slugs were recovered because there was no exit

wound, however, the gunshot wound alone could bring about a person's death.^[11]

Version of the Defense

Appellant denied complicity in the crime and proffered an alibi. He alleged^[12] that at 6 PM of January 16, 2000, he was in his parents-in-law's house in Barangay Cabangkalan, Aroroy, Masbate, where he was farming the rice field of his father-in-law Jeneroso Dalinog. Claiming that he has been residing in Barangay Cabangkalan since 1999, appellant stated^[13] that the last time he saw his uncle Eliminio was in 1997 when he went to his mother's plantation in Sitio Samoyao, where Eliminio lived. He averred^[14] that from Barangay Cabangkalan to Barangay Panique it would take about an hour's drive by truck and from Barangay Panique to Sitio Samoyao, thirty minutes on foot. He claimed to have a good relationship with Eliminio and stated that the person against whom Eliminio harbored a personal grudge was one Iling Onelan, the present husband of Cornelia.^[15] He also claimed having a good relationship with Gabriel and his other uncle Ruben and asserted that he does not know of any reason for his indictment.^[16]

PO1 Gil Llenares, an investigator of the Aroroy Police Station who was not yet in the police force on January 16, 2000, testified that the incident relating to the death of Eliminio was entered in the police blotter as Entry No. 11942 on the basis of a report of one Marissa Rase, sister-in-law of Eliminio, that the latter was shot to death by appellant and Rudy Vargas.^[17]

On July 12, 2010, the RTC promulgated^[18] the June 2, 2010 Decision^[19] convicting appellant of murder. The *fallo* reads:^[20]

WHEREFORE, premises considered, judgment is hereby rendered finding JEREMIAS DY y RASE GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. He shall serve his sentence at the National Bilibid Prison, Muntinlupa City. In his service thereof he shall be credited with such period that he had undergone preventive imprisonment while this case is pending pursuant to Article 24 of the Revised Penal Code.

On his civil liability, Jeremias Dy is hereby ordered to pay to the heirs of Eliminio Rase the amount of P50,000.00 as civil indemnity.

IT IS SO ORDERED.

Rejecting appellant's defense of denial and alibi for lack of proof of the physical impossibility of his presence in the crime scene, the RTC accorded^[21] full faith and credence to the testimonies of Gabriel and Jonathan. The RTC ruled that said testimonies are eyewitness accounts, categorical, consistent, and untainted by any ill-motive to falsely accused-appellant, and they were corroborated by the physical evidence. The RTC ruled out the qualifying circumstance of evident premeditation because the prosecution's evidence is silent as to the time that appellant determined to commit the crime thus making it impossible to ascertain whether he had the opportunity, thru sufficient lapse of time, to reflect on the consequences of his act.^[22] However, the RTC appreciated treachery.

Seeking reversal of his conviction, appellant interposed this appeal raising this assignment of errors:^[23]

I. THE TRIAL COURT ERRED IN GIVING CREDIT TO THE TESTIMONIES OF THE PROSECUTION WITNESSES; *and*

II. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT IN NOT GIVING CREDENCE OF HIS DEFENCE OF DENIAL AND ALIBI.

Appellant ascribes^[24] error to the RTC's giving of full credence to the testimonies of Cornelia, Gabriel and Ruben on the contention that said testimonies are contradictory and inconsistent. He adverts to Cornelia's declarations in her affidavit^[25] and during the preliminary investigation^[26] that it was only Rudy Vargas whom she saw aiming the gun at Eliminio and argues that said declarations contradicted her testimony in court that she did not witness the actual shooting. He asserts that such incoherence rendered doubtful Cornelia's credibility.

Appellant also alludes to the incompatibility of the testimonies of Gabriel and Ruben. He claims that Gabriel testified that after shooting Eliminio appellant headed to Ruben's house and Gabriel heard screams therefrom; however, Ruben declared that when appellant reached his house he summoned him to come out but he stayed inside the house and kept quiet.

The Office of the Solicitor General (OSG) counters^[27] that although Cornelia's testimony is not an eyewitness account, nonetheless, the commission of the crime and the identity of its perpetrator were proved by the eyewitness accounts of Gabriel and Jonathan. The OSG stresses that Gabriel and Jonathan's testimonies were borne out of personal knowledge given their presence and proximity to Eliminio and appellant at the time of the shooting. The OSG argues that the alleged inconsistencies are inconsequential and irrelevant and do not detract from appellant's culpability. The OSG insists that the testimonies of Gabriel and Jonathan positively identifying appellant as the shooter are corroborated by the physical evidence and untainted by any material inconsistency, hence, they are entitled to great weight and must be sustained.

Finally, the OSG prays for the modification of the civil indemnity and for the award of moral and exemplary damages in conformity with prevailing jurisprudence.

RULING

Appellant essentially challenges the credibility of prosecution witnesses Cornelia, Gabriel and Jonathan. It has been held time and again that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of the witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its singular and unequalled opportunity of direct observation of the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Hence, where the issue raised

involves the credibility of witnesses, the trial court is in the best position to decide the question and its findings thereon are not to be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case. The reviewing court is enjoined to observe restraint in interfering with the trial court's assessment of credibility absent any indication or showing of undermining facts of relevance or of grave abuse of discretion.^[28] Jurisprudence further instructs that where there is no evidence that the prosecution witnesses were actuated by ill motive to fabricate charges or falsely testify against the accused, the presumption is that that they were not so actuated and their testimony is entitled to full faith and credit.^[29] Here, appellant never imputed improper motives against the prosecution witnesses.

Although there is an apparent variance between Cornelia's affidavit and her testimony in open court, such does not necessarily affect her credibility. It is a well-entrenched rule that the variance between the witnesses' testimonies in open court and their affidavits does not affect their credibility for it is oft repeated that affidavits are usually abbreviated, incomplete, and inaccurate resulting in their seeming contradiction with the declarants' testimony in court. Hence, discrepancies between the affiant's statements in his affidavit and those he made on the witness stand do not necessarily discredit him; for as between the affidavit and the testimony given in open court, the latter prevails because ex-parte affidavits are generally considered inferior to the testimony given in court.^[30] At any rate, Cornelia clarified in open court that she never mentioned the name Rudy Vargas when she executed her affidavit and she never saw Rudy Vargas on the night in question.^[31] She admitted that she did not see the actual shooting and stated that it was her children who did.

A reading of the assailed decision shows that the conviction of appellant was based on the eye-witness accounts of the victim's sons. Gabriel and Jonathan narrated in a simple, direct and forthright manner what they saw on that fateful evening. They witnessed how their father was gunned down in cold blood in their presence. They knew appellant because he is their cousin and they positively identified him as their father's killer. It has been held that the familiarity of the witness with the assailant erases any doubt that the witness could have erred, and that a witness related to the victim has a natural tendency to remember the faces of the person involved in the

attack on the victim, because relatives, more than anybody else, have the highest interest in seeking justice for the victim and bringing the malefactor before the law.^[32] Moreover, there is absolutely nothing in the record to show that Gabriel and Jonathan could have been ill-motivated in accusing appellant of the serious offense of murder. The RTC did not err in giving full faith and credence to their testimonies.

Considering that Gabriel and Jonathan had positively identified appellant as the assailant, his defenses of denial and alibi must fall. Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of a witness. To surmount the positive and affirmative testimony of the prosecution witness, denial must be proved by strong evidence of non-culpability, otherwise, it is purely self-serving and without weight in law. Alibi, on the other hand, is an inherently weak defense and crumbles in the light of positive declarations of truthful witnesses on affirmative matters. An alibi, being