

## SECOND DIVISION

[ G.R. No. 230991, June 11, 2018 ]

**HILARIO B. ALILING, PETITIONER, V. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

#### **CAGUIOA, J:**

Before the Court is a Petition for Review<sup>[1]</sup> (Petition) under Rule 45 of the Rules of Court, assailing the Decision<sup>[2]</sup> dated November 24, 2016 (Assailed Decision) and Resolution<sup>[3]</sup> dated March 30, 2017 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CR No. 38335, which affirmed the Decision<sup>[4]</sup> dated November 25, 2015 of the Regional Trial Court (RTC), Branch 5, Lemery, Batangas (RTC Decision), finding petitioner Hilario B. Aliling *alias* "Larry" (Aliling), guilty of Frustrated Murder and sentencing him to suffer imprisonment of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as maximum.

#### **The Facts**

Aliling was charged under the following Information:

That on or about the 18<sup>th</sup> day of April, 2010, at about 10:00 o'clock in the evening, at Barangay Matingain 1, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed short firearm, with intent to kill and with the qualifying circumstances of treachery and evident premeditation, without any justifiable cause, did then and there [willfully], unlawfully and feloniously attack, assault, and shoot with the said firearm one Jerry Tumbaga y Marasigan, suddenly and without warning, thereby inflicting upon the latter 0.5 cm Gun Shot Wound L1-L2 Paravertebral Area, Left and 0.5 cm.[ gunshot wound], Infrascapular Area, Right which required medical attendance and incapacitated him from performing his customary work for a period of more than three (3) months, the said accused having performed all the acts of execution which should have produced the crime of murder as a consequence, but which nevertheless was not produced by reason of some cause independent of the will of the perpetrator, that is because of the timely and able medical attendance rendered to the said Jerry Tumbaga y Marasigan, which prevented his death.

Contrary to law.<sup>[5]</sup>

Aliling filed a Motion for Bail which was approved by the RTC in its Order<sup>[6]</sup> dated August 24, 2010. Upon arraignment, Aliling pleaded "not guilty."<sup>[7]</sup>

The RTC summarized the facts for both the prosecution and the defense, as follows:

#### VERSION OF THE PROSECUTION

The prosecution first presented the alleged victim in this case, Jerry Tumbaga y Marasigan. The witness testified that on April 18, 2010, at 10:00 o'clock in the evening, he was watching a basketball game in Barangay Matingain, together with his uncle Jesus Marasigan. [He] then left the place and proceeded to his motorcycle which was then parked at about 7-8 meters away. When he was about to board his motorcycle, he was shot at the back and when he looked back, he recognized accused Hilario Aliling as the one firing. The accused then fired again, and the victim was again hit at the back. The witness ran away, felt dizzy and subsequently fell down near the basketball court. The witness further testified that he was brought to Metro Lemery Hospital and after about an hour, he was transferred to Batangas Regional Hospital where he underwent surgery.

The second prosecution witness is Jesus Marasigan y Camson, uncle of the private complainant. The witness testified that on the date and time alleged in the Information, he was at a basketball court in Matingain I, Lemery, Batangas together with Jerry Tumbaga. The private complainant then asked permission to leave. The private complainant then went towards his parked motorcycle in front of the basketball court. The witness saw Jerry Tumbaga [ride] his motorcycle and then suddenly, accused Hilario Aliling arrived and fired twice at the private complainant. The private complainant ran away and then fell down while the accused [likewise] ran, rode a motorcycle and escaped. Thereafter, the witness, together with other persons brought Jerry Tumbaga to Metro Lemery Hospital.

The third prosecution witness was Dr. Mark Louie M. Lanting x x x who conducted the operation on Jerry Tumbaga x x x and [issued] the medico[-]legal certificate x x x dated April 29, 2010.

#### VERSION OF THE [DEFENSE]

The first [defense] witness is Hilario Aliling y Bathan. The accused testified that on April 18, 2010, between 7:00 o'clock and 8:00 o'clock in the morning, he was at Barangay Masalisi together with Annie, Tessie, Janno, Piolo[,], Coring and Melody. They were campaigning for a certain Apacible. According to the accused, they finished campaigning at around 6:00 o'clock in the evening of the same day and waited for the start of the "[*miting de avance*]". They left the "[*miting de avance*]" at around 12:00 midnight and proceeded to the house of Annie, their coordinator, at Barangay Matingain and arrived there at around 1:00 o'clock in the morning. Thereafter, he took his motorcycle and went home. The accused arrived at his house at around 1:30 o'clock. The next day, he went campaigning again.

The accused further testified that he first learned that he was a suspect on June 22 when he received a subpoena. The accused went further on testifying that the private complainant [was] probably mad at him due to their previous confrontation that happened in Barangay Butong.

The next defense witness was Adrian Cabral Atienza. The witness testified that on April 18, 2010, from 8:00 o'clock in the morning up to 1:00 o'clock of the following day, he was with the accused, together with several others, at Barangay Masalisi. He likewise testified that they were campaigning that day for candidate Apacible.

The last defense witness was Michael Perez Bathan. [The] witness testified that he was at the basketball court in Barangay Matingain on April 18, 2010. He was then watching the basketball game when he heard two gunshots. He testified further that the private complainant was about to ride his motorcycle when he was shot. The private complainant ran and then fell to the ground. The witness also testified that he did not see accused Hilario Aliling at the place when the shooting happened and instead saw an unidentified man shot the private complainant.<sup>[8]</sup>

On November 25, 2015, the RTC rendered its Decision finding Aliling guilty beyond reasonable doubt of Frustrated Murder. The trial court gave more credence to the testimonies of the victim, Jerry M. Tumbaga (Tumbaga) and the other eyewitness Jesus C. Marasigan (Marasigan) who both identified Aliling as the gunman, as against Aliling's defense of alibi. The RTC noted that there was an inconsistency in Aliling's testimony when he stated that he used his motorcycle on the day of the incident but then on cross-examination, he stated that he left his motorcycle at the house of their coordinator. The lower court further held that the positive allegations of the prosecution witnesses prevailed over the negative assertions of the defense witnesses.

Thus, Aliling filed a Notice of Appeal<sup>[9]</sup> which was given due course by the RTC in its Order dated December 10, 2015. Aliling's Motion for Bail pending appeal was also granted.<sup>[10]</sup> The CA affirmed the RTC Decision in its Assailed Decision. On the alibi, the appellate court noted that the corroborative witness testified that he did not know Aliling's whereabouts at the time of the incident.<sup>[11]</sup> Aliling's Motion for Reconsideration<sup>[12]</sup> was subsequently denied by the CA in its Assailed Resolution. Thus, he elevated the case before the Court through this Petition.

### ***The Petition***

Aliling contends that the CA committed reversible error in affirming the judgment of the RTC. He maintains his innocence and alleges that the prosecution was not able to discharge the burden of proving his guilt beyond reasonable doubt. Aliling claims that the testimonial evidence of the prosecution cannot be relied on as they were inconsistent and incredible.

Aliling also alleges that the CA failed to properly consider the defense's evidence. According to him, the defense was able to present and submit unbiased testimonies of credible witnesses who supported his alibi that he was in *Barangay (Brgy.)* Masalisi doing campaign activities until 1:00 o'clock in the morning on the day of the shooting. The eyewitness, Michael P. Bathan (Bathan), friend of both Aliling and Tumbaga, also testified that he witnessed the shooting incident and saw that the gunman was not Aliling but an unidentified person.

### **Issue**

Whether the CA erred in affirming the RTC's judgment of conviction.

## The Court's Ruling

The Petition is meritorious.

In criminal prosecutions, a person who stands charged of a crime enjoys the presumption of innocence, as enshrined in the Bill of Rights.<sup>[13]</sup> He is designated as the *accused* precisely because the allegations against him have to be proven beyond reasonable doubt. Due process dictates that an accused is entitled to a fair trial where both the prosecution and defense can present their respective versions of the events, and submit proof thereof. Accusation does not amount to conviction. Only when the prosecution has established guilt beyond reasonable doubt shall the presumption of innocence be overturned. In this case, the prosecution did not overcome the burden of proof.

It has been consistently held that a petition for review on certiorari under Rule 45 shall only raise questions of law as the Court is not a trier of facts. A factual question would necessitate the reevaluation of the evidence submitted before the trial court. This is allowed in the exceptional circumstance where the judgment is based on a misapprehension of the facts.<sup>[14]</sup> Such is the situation in this case.

### ***Positive identification versus denial and alibi***

Positive testimony is generally given more weight than the defenses of denial and alibi which are held to be inherently weak defenses because they can be easily fabricated.<sup>[15]</sup> However, the defenses of denial and alibi should not be so easily dismissed by the Court as untrue. While, indeed, the defense of denial or alibi can be easily fabricated, the same can be said of untruthful accusations, in that they can be as easily concocted.

In considering the defenses of denial and alibi, the Court held in *Lejano v. People*<sup>[16]</sup>

: But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?

There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.<sup>[17]</sup>

Thus, if found credible, the defenses of denial and alibi may be considered complete and legitimate defenses. The burden of proof does not shift by the mere invocation

of said defenses; the presumption of innocence remains in favor of the accused.

In alibi, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise physically impossible for him to be at the scene of the crime at the time thereof.<sup>[18]</sup> Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.<sup>[19]</sup>

### ***Purported inconsistencies in defense's evidence***

In the instant case, the RTC and CA did not give credence to the defense's testimonial evidence based on the alleged inconsistencies of the witnesses' statements. However, the Court finds that Aliling's alibi was straightforward, credible, **and corroborated by an impartial witness. Furthermore, there was eyewitness testimony to the effect that Aliling was not the gunman.**

Contrary to the findings of the RTC, there was no inconsistency in Aliling's testimony as regards his use of his motorcycle. Thus, a reexamination of his testimony is necessary to clarify the alleged inconsistency. Aliling testified as follows:

*[Direct examination of Aliling by Atty. Myla Magsombol<sup>[20]</sup> (Atty. Magsombol)]*

Q Can you recall where were you on April 18, 2010?

A Yes, ma'am.

Q Where were you?

A I was at Brgy. Masalisi, ma'am.

Q What were you doing in Brgy. Masalisi?

A I was campaigning, ma'am.

Q Do you recall what time you arrived in Brgy. Masalisi on April 18, 2010?

A Between 7:00 o'clock and 8:00 o'clock, ma'am.

Q In the morning or in the evening?

A In the morning, ma'am.

Q When you arrived at 7:00 o'clock in the morning in Brgy. Masalisi on April 18, 2010, what did you do?

A I proceeded campaigning by posting the flyers of candidate Apacible, ma'am.

x x x x

Q What time did you finish with the campaigning?

A At 6:00 o'clock, ma'am.

x x x x