

SECOND DIVISION

[G.R. No. 137666, May 20, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLON ORTILLAS
Y GAMLANGA, APPELLANT.**

DECISION

AUSTRIA-MARTINEZ, J.:

On January 6, 1995, an Information^[1] was filed against Marlon Ortillas with the Makati Regional Trial Court, and assigned by raffle to Branch 255 (Las Piñas), then presided over by Judge Florentino M. Alumbres.^[2] The Information reads:

The undersigned 3rd Assistant Prosecutor accuses MARLON ORTILLAS Y GAMLANGA of the crime of Murder, committed as follows:

That on or about the 21st day of December, 1994, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one Jacob Relox whose true identity and present whereabouts is still unknown and both of them mutually helping and aiding one another, with intent to kill and without justifiable motive and evident premeditation and by means of treachery and use of explosive (pillbox), did, then and there willfully, unlawfully and feloniously attack, assault and throw a Pillbox to one Jose Mesqueriola y Labarosa, thereby inflicting upon the latter serious and mortal wounds, which directly caused his death.

CONTRARY TO LAW.
Las Piñas, Metro Manil
December 28, 1994.

(signed)
APOLINAR C. QUETULIO, JR.
3rd Assistant Prosecutor^[3]

Despite the fact that it is stated in the title of the Information that appellant was a minor, detained at the Municipal Jail, Las Piñas, Metro Manila, Presiding Judge Alumbres failed to ascertain and verify the alleged minority of appellant and determine if the provisions of P.D. No. 603, otherwise known as The Child and Youth Welfare Code should be applied to Ortillas.

After arraignment of appellant who pleaded not guilty to the offense with which he is charged, the trial court dispensed with the pre-trial and proceeded to trial on the merits.

On June 8, 1995, the prosecution presented Russel [4] Guiraldo, an alleged eyewitness. After Russel's direct examination, Atty. Jose G. de Leon, the then counsel for Ortillas moved for postponement as he had a very important appointment to keep which Judge Alumbres granted. Subsequently, Atty. de Leon had to withdraw as counsel because of eye ailment which the trial court approved. The only other hearing that took place after the testimony of Russel on June 8, 1995, was on September 5, 1995 when NBI Medico-Legal Officer Roberto Garcia testified for the prosecution. All in all, the continuation of the hearing was postponed thirteen times from June 8, 1995 until May 8, 1996 when the prosecution finally rested its case [5] with the submission of its documentary evidence. [6] Witness Russel was never presented for cross-examination. The last time he was subpoenaed was for the hearing set on November 6, 1995, [7] but records do not show that he appeared on said date. Although several hearings were scheduled thereafter, Russel was not subpoenaed anymore.

On the basis of the testimonies of Russel and Dr. Garcia, Judge Alumbres rendered a decision [8] dated September 21, 1998 with the following findings:

...Roselle Guiraldo positively identified and pointed to the accused as the one who threw the pillbox to his companion Jose Mesqueriola in the morning of December 21, 1994. He even specified the exact location where the accused was at the time he threw the pillbox. According to him, the accused was standing in front of a gate of a house along Calle Real, near Plaza Quezon, Las Piñas, Metro Manila. He could not be mistaken of the identity of the accused because they were former classmates at the Las Piñas Municipal High School and members of rival fraternities. As could be deduced from the facts, the pillbox was intended for Roselle Guiraldo because the accused has the strongest motive of killing him. It will be recalled that three (3) days after the opening of classes at the Las Piñas Municipal High School, Roselle Guiraldo and the accused could not see eye to eye already because Roselle Guiraldo was stoned and the stone came from the direction of the accused while seated inside the classroom. Roselle Guiraldo tried to get even with the accused by waiting for him outside of the school premises every after classes. Afraid that a personal encounter may happen and he will be in big trouble, the accused sought transfer to the Las Piñas Municipal High School North, which is located at the Vergonville Subdivision in Barangay Pulanglupa II. This is now very far from his residence at San Francisco St. in Barangay Aldana. While if he was not transferred, his school (Las Piñas Municipal High School) is only walking distance from his residence at San Francisco St. His ill-feelings against Roselle Guiraldo became intense because of the increasing problem he has to face or handle. He has his work and a common-law wife to support and who was now getting pregnant. But all the while, he has not severed his relationship with his gangmates, although according to him, he already quit from being an active member of Crime buster fraternity after he became a working student in July 1993. [9]

. . .

The defense put up by the accused is alibi, a very weak defense because

it is easy to fabricate. Just like in the present case, he was still able to tell the authorities that he was in his house when his friend Jose Mesqueriola was killed. If there was truth that he was in his house when Jose Mesqueriola was killed, how come not one occupant in his house came forward to testify for him during the trial. Alibi is considered the weakest defense because it can easily be fabricated and cannot stand in the light of clear, positive and precise evidence of the prosecution establishing the identity of the accused (People vs. Magallanes, 218 SCRA 109; People vs. Santos, 221 SCRA 715; People vs. Bescana, 220 SCRA 93; People vs. dela Cruz, 217 SCRA 283). It is a fundamental dictum that the defense of alibi cannot prevail over the positive identification of the accused (People vs. Tanco, 218 SCRA 494).

The charge against the accused is murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659. The commission of the crime in the present case was attended by the circumstance of explosion (the use and exploding of the pillbox). In the Certificate of Post-Mortem Examination (Exh. "C") which Dr. Garcia issued, he placed that the cause of death which is "Traumatic-head injury" was the result of an alleged explosion. On whether there was the circumstance of evident premeditation, the evidence does not clearly show.

There is present in the circumstantial evidence of flight. As earlier established, the accused was one of those who escaped from detention in the jail of Las Piñas City on April 17, 1997. It is well-settled rule that flight is indicative of guilt of the accused. Flight is a silent admission of guilt, and is an indication of his guilt or of a guilty mind (People vs. Martinado, 214 SCRA 712; People vs. Cruz, 213 SCRA 601; People vs. Alabaso, 204 SCRA 458; People vs. Babac, 204 SCRA 968; People vs. Lorenzo, 204 SCRA 361).^[10]

The dispositive portion of the assailed decision reads:

WHEREFORE, the Court finds the accused Marlon Ortillas y Gamlanga guilty beyond reasonable doubt of the charge against him in the information, and he is hereby sentenced to suffer the penalty of reclusion perpetua; to suffer the accessory penalties provided for by law; to indemnify the heirs of the victim Jose Mesqueriola in the sum of P100,000.00; and to pay the costs.

SO ORDERED.^[11]

Hence, the present petition for review on certiorari with the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN NOT COMMITTING THE ACCUSED-APPELLANT TO THE CARE OF THE DEPARTMENT OF SOCIAL WELFARE WHICH SHALL BE RESPONSIBLE FOR HIS APPEARANCE IN COURT

WHENEVER REQUIRED.

II

THE TRIAL COURT ERRED IN DENYING THE REQUEST OF ATTY. TERESITA CARANDANG- PANTUA OF THE PUBLIC ATTORNEY'S OFFICE TO CROSS-EXAMINE THE WITNESS PRESENTED BY THE PROSECUTION DURING THE HEARING ON JUNE 8, 1995.

III

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS ROSELLE GUIRALDO AND IN DISREGARDING THE TESTIMONY OF ACCUSED-APPELLANT.^[12]

Anent the first assigned error:

In his Brief, appellant points out that the first counsel of appellant, Atty. Jose de Leon, raised the minority of appellant and invoked the provisions of P.D. No. 603 during the initial hearing conducted on June 8, 1995 but Judge Alumbres outrightly denied his request. Atty. de Leon submitted to the ruling and prosecution witness Russel was called to the witness stand. There is merit to the complaint of appellant. Judge Alumbres was remiss of his duty to ascertain the minority of appellant at the onset of the proceedings. The records further disclose that he likewise ignored the letter of Director Milda S. Alvior of the Department of Social Welfare and Development (DSWD) filed with his court on January 31, 1996 informing him that appellant at that time was sixteen years old and alleging that his prolonged stay in the Las Piñas Jail for one year and one month at the time, mixed with hundred criminals affected him physically, intellectually, emotionally and socially.^[13]

The Presiding Judge should be sanctioned for his negligence in the performance of his duties with respect to accused minor - but these particular omissions are not sufficient grounds to merit the reversal of the assailed decision.

As to the second assigned error:

The Court finds merit to appellant's claim that the judgment of the trial court has unduly deprived him of his constitutional right to meet the witness face to face^[14] which includes the right to cross-examine the witness.

Section 1(f), Rule 115 of the then prevailing Rules of Criminal Procedure provides:

SECTION 1. Rights of the accused at the trial. – In all criminal prosecutions, the accused shall be entitled to the following rights:

. . .

(f) To confront and cross-examine the witnesses against him at the trial.

. . .

Section 6, Rule 132 of the then prevailing Rules on Evidence provides:

SEC. 6. *Cross-examination; its purpose and extent.* – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

As the Court held in *People vs. Rivera*, to wit:

The right of a party to cross-examine a witness is embodied in Art. III, §14(2) of the Constitution which provides that the accused shall have the right to meet the witnesses face to face and in Rule 115, §1(f) of the Revised Rules of Criminal Procedure which states that, in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witness against him. The cross-examination of a witness is essential to test his or her credibility, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him.^[15]

Records disclose that there was never a valid waiver on the part of appellant or his counsel to cross-examine the prosecution witness Russel. The first counsel, Atty. de Leon, in the hearing of June 8, 1995 requested for postponement of the cross-examination of Russel in view of his “professional engagement”, without objection on the part of the prosecution.^[16] The next hearing was also postponed in view of the eye problem of Atty. de Leon.^[17] And on August 3, 1995, the hearing was again postponed due to the withdrawal of appearance of Atty. de Leon on ground of eye-ailment.^[18] Subsequent dates of hearing were postponed because the Presiding Judge went on leave.^[19] It is only on September 25, 1995 that Atty. Leopoldo Macinas appeared as new counsel for appellant.^[20] However, although it appears in the Minutes of the hearing scheduled on said date that the same is for cross-examination of Russel,^[21] there is no showing that Russel was present during that day. In fact, the Minutes show that Russel had to be notified for the next hearing set on November 6, 1995.^[22] But on November 6, the hearing was again postponed to November 11, 1995 due to typhoon Rosing. The Minutes again does not show that on November 6, Russel appeared in court as only complaining witness Grace Mesqueriola signed thereon.^[23] Thereafter, Russel was never notified of the hearings set on December 11, 1995, January 17, 1996, January 22, 1996, January 31, 1996, February 26, 1996, March 25, 1996 and May 8, 1996.

Judge Alumbres’ refusal to give opportunity for Atty. Teresita Carandang-Pantua of the Public Attorney’s Office (PAO), the new counsel for appellant, to cross-examine prosecution witness Russel on the ground that prosecution had already rested its case, is patently a grave abuse of discretion on his part. Although Atty. Pantua had adequately explained appellant’s predicament, on the first scheduled date of hearing for the presentation of defense evidence, Judge Alumbres, upon the perfunctory objection of the prosecution, unreasonably refused to heed Atty. Pantua’s request.