

THIRD DIVISION

[G.R. No. 128225, June 17, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE NARRA Y ARIOLA, ACCUSED-APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

From the consolidated/joint decision^[1] of the Regional Trial Court of Makati, Branch 134 finding him guilty beyond reasonable doubt in Criminal Case Nos. 92-4651 and 92-4652 for murder and homicide, respectively, appellant Dante Narra y Ariola comes to this Court on appeal.

In Criminal Case No. 92-4651, the Information^[2] charges appellant with murder defined and penalized under Article 248 (as amended by R.A. 7659) of the Revised Penal Code allegedly committed as follows:

"That on or about the 8th day of July, 1992, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with .45 caliber pistol, conspiring and confederating with a companion whose true identity and present whereabouts is still unknown and both of them mutually helping and aiding with one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one BEETHOVEN GRAN y TAMPARONG on the different parts of his body, thereby inflicting upon him serious and mortal wounds, which directly caused his death.

CONTRARY TO LAW."

In Criminal Case No. 92-4652, the Information^[3] charges appellant with homicide defined and penalized under Article 249 of the Revised Penal Code allegedly committed as follows:

"That on or about the 8th of July, 1992, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a .45 calibert (sic) pistol, conspiring and confederating with a companion whose true identity and present whereabouts is still unknown and both of them mutually helping and aiding with one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one MARY GRACE MANLANGIT y CINCO on the left ear (head) thereby inflicting upon the latter gunshot wounds which directly caused her death.

CONTRARY TO LAW."

When arraigned, the accused, with the assistance of counsel, entered a plea of not guilty to both charges. The two cases were tried jointly.

From the evidence of the prosecution consisting of the testimonies of Isidro Amangca, Lita Manuel, Dula Bautista, Brigida Vilorio, Ernesto Manlangit, Allan Gran, Virginia Gran, Dra. Patricia Dulay Tabangcura and Dr. Alberto Reyes, the following are established:

At about 9:40 a.m. of July 8, 1992, while Isidro Amangca was selling bananas outside the *talipapa* at Buting, East Rembo, Fort Bonifacio, Makati,^[4] an owner-type jeep driven by Beethoven Gran (Gran) stopped right in front of him.^[5] Moments later, appellant who was on board a motorcycle driven by an unidentified man suddenly pulled a .45caliber firearm,^[6] aimed and fired a shot at Gran who was still seated at the driver's seat of his jeep.^[7] The shot missed Gran who quickly jumped out of the jeep and landed on the sidewalk by the *talipapa*, only to be shot again by appellant^[8] who, at this juncture, was already in a standing position.^[9] Again, the shot missed Gran who ran towards and sought shelter in the nearby store of Ernesto Manlangit.^[10] Appellant followed suit^[11] and fired several shots, hitting Gran as well as Manlangit's 4-year old daughter Mary Grace who was inside the store.^[12] Upon seeing the seemingly lifeless body of Gran, appellant hurriedly fled together with his unidentified companion on board the motorcycle^[13] and headed towards the direction of Guadalupe.^[14]

Gran died on the spot while Mary Grace was brought to the Fort Bonifacio General Hospital in Makati where she was pronounced dead on arrival.

In the afternoon also of July 8, 1992, Amangca gave an eyewitness account^[15] of the incident before the Makati Police. He later gave a description of the face of "the gunman" — basis of the cartographic sketch prepared by the NBI.^[16]

On July 18, 1992, after appellant was arrested, Amangca positively identified appellant from a line-up of "suspects" as the gunman.^[17]

From the autopsy report^[18] of Dr. Alberto M. Reyes, Medico-Legal Officer of the National Bureau of Investigation, it appears that Gran died of gunshot wounds on the face, chest and buttocks, while Mary Grace died of a gunshot wound on the head.

Appellant who interposed the defense of alibi summarizes in his brief^[19] his version as follows:

"x x x Accused Dante Narra testified that the deceased, Beethoven Gran, was a close friend of his 'buddy' for several years while in the service of the Philippine Constabulary; that during his lifetime, Beethoven confided to him his problems — like the threats to his (Beethoven) life by unidentified callers as he was a member of the RAM, the killing of a muslim by the name of Edwin Kahal for which the latter's family threatened him (Beethoven), and the most serious threat came from a gunrunning syndicate, of which a certain 'Dok' was a member; that on

the early morning of July 8, 1992, he left his residence at Murphy, Quezon City, and went to the house of Beethoven Gran on board his owner type jeep to get a spare tire; that in the house of Beethoven, he met Beethoven's wife and he introduced himself; that when he was told that Beethoven was not around, he left at 8:30 that morning and went home to Murphy, Quezon City, arriving thereat at 9:00 o'clock in the morning; that he went to a repair shop to have the electric fan of his jeep repaired; and that he left his jeep and returned in the afternoon and met some friends. (TSN, pp. 22-23, March 4, 1994)

Accused also declared that he came to know of the death of Beethoven Gran only on the afternoon of July 9, 1992 through a newspaper and that he did not go to the wake of Beethoven Gran because he was forewarned of the threats to his life. He also claimed that from July 8 to the time he was detained at the Makati Municipal Jail on July 18, 1992, he was reporting for duty (TSN, pp. 15-20, May 13, 1994); that on July 18, 1992, he was ordered by his Officer to report to the Makati Police Station; that he was made to participate in a line up where the witnesses to the killing of Beethoven Gran were to identify the gunman; that in said line up, the witnesses failed to identify the gunman; that Sgt. Baldado told the witnesses to point to a person and a second line up was formed; and that in the second line up, he was pointed to as the gunman. He alleged that after he was pointed to as the gunman, he was told to remove his uniform and he was locked up in jail. x x x"

Finding for the prosecution, the trial court convicted appellant by Decision of August 29, 1996, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

In Criminal Case No. 92-4651, this Court finds accused DANTE NARRA guilty beyond reasonable doubt of the crime of Murder and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA; he is also ordered to pay the heirs of Beethoven Gran the sum of P100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and the amount of P59,772.70, as actual damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

In Criminal Case No. 92-4652, this Court finds accused Dante Narra guilty beyond reasonable doubt of the crime of Homicide and he is hereby sentenced to an indeterminate sentence of SIX (6) years and ONE (1) day, of Prision Mayor, as the minimum penalty to TWELVE (12) years and ONE (1) day of Reclusion Temporal, as the maximum penalty; the accused is ordered to pay the heirs of Mary Grace Manlangit the sum of P100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, the amount of P49,355.00 as actual damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED."^[20]

Hence, the present appeal anchored on the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING DUE WEIGHT AND CREDENCE TO THE INCONSISTENT, CONTRADICTORY, IMPOSABLE (*sic*) AND DOUBTFUL TESTIMONIES OF THE FIVE (5) PRINCIPAL PROSECUTION WITNESSES TO THE SERIOUS PREJUDICE OF THE ACCUSED-APPELLANT'S SUBSTANTIAL RIGHTS.

II

THE TRIAL COURT ERRED IN REJECTING THE DEFENSE OF ALIBI INTERPOSED BY ACCUSED-APPELLANT INSPITE OF THE FACT THAT THERE WAS NO SUFFICIENT PROOF THAT HE WAS POSITIVELY IDENTIFIED BY ANY OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

As in most criminal cases, the issue is one of credibility.

Appellant, claiming that the prosecution failed to prove his guilt beyond reasonable doubt, draws attention to alleged inconsistent, conflicting and contradictory testimonies of prosecution witnesses, he highlighting the following: Amangca's testimony that after appellant first shot Gran who at the time was behind the wheels of his jeep, appellant immediately left the scene with his companion on board a motorcycle,^[21] whereas in his subsequent testimony, he declared that appellant shot the victim several times;^[22] Amangca's testimony that appellant, after the first shot, immediately alighted from the motorcycle, whereas in his subsequent testimony, he declared that appellant was still on board the motorcycle when he fired the second shot;^[23] Amangca's different accounts regarding appellant's footwear and length of his pants; storeowner Manlangit's testimony that he did not see the face of the assailant on the first shot as he only heard the shot,^[24] whereas in his testimony on cross-examination, he declared that he saw the face of the assailant as soon as the latter fired the first shot;^[25] and Manlangit's testimony that he saw the entire shooting incident,^[26] whereas in his subsequent testimony he stated that he was not able to see the incident.^[27]

And appellant questions the credibility of Dula Bautista who testified only after eight (8) months from the occurrence of the incident; of Lita Manuel, who like Dula Bautista, was not listed as a witness for the prosecution and only volunteered to give her statement several months after the incident, upon the prodding of witness Manlangit; and of Brigida Viloria, a close friend of the Manlangits, whose testimony is suspicious and doubtful as she surfaced only after one year from the occurrence of the incident.

The appeal is bereft of merit.