

SECOND DIVISION

[G.R. No. 122765, October 13, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO VARGAS Y LUCERO, APPELLANT.

D E C I S I O N

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court, Branch 38, Iloilo City, finding appellant Edgardo Vargas y Lucero guilty of murder, sentencing him to suffer the penalty of *reclusion perpetua*, and to pay the heirs of SPO1 Alfredo Dan Cocjin y Magnaye the sum of P22,785.00 as actual damages, and P50,000.00 as civil indemnity *ex delicto*, and the costs of the suit.

Job Bieren, a laborer and a resident of Sto. Domingo, Barotac, Iloilo, had been dishonorably discharged from the Philippine Constabulary for being absent without going on official leave. At around 1:00 p.m. on January 4, 1992, he went to the basketball court located in the town plaza of Banate, Iloilo. He had earlier agreed to meet his friend Clark Batzar, for a game of basketball. Job waited for an hour or so, but Clark did not show up. Job decided to leave the place and proceeded to the house of Jose Vargas located at Zona Sur, Banate, Iloilo, to watch the "daily double," an illegal local gambling game. He passed through the fence at the back door of the house, and arrived thereat at around 2:30 p.m.^[2] Among the people in the house were Edgardo "Dodoy" Vargas, who had been appointed as Commander of the Civilian Volunteers Organization by his cousin Mayor Jonathan Sanico, and SPO1 Alfredo Dan Cocjin, who had just been transferred from the Banate to the Barotac Viejo Police Station.

Job gravitated to the balcony while waiting for the games to start. Suddenly, there was a commotion and pandemonium ensued. People fled from the house. Job saw Edgardo^[3] as the latter collared SPO1 Cocjin with his left arm and with his right hand pointed a pistol at the policeman's right temple. Job was about five meters away. Edgardo dragged SPO1 Cocjin away from the house, through a narrow passageway leading to the national highway. Edgardo then shot SPO1 Cocjin in the head. Edgardo stepped away from the fallen victim, and fired another shot, hitting SPO1 Cocjin at the back. Warlito "Buloy" Bagcal, who was outside the fence asked Edgardo, "*Doy, nga-a gin tira mo gid si Dan?*" (Doy, why did you shoot Dan?).^[4] Edgardo saw Job, and the latter was petrified. Job hurriedly left the place, passing through the back way.

Dr. Rustum Larawan, a resident of Barangay Poblacion, Banate, Iloilo, reported the shooting incident to the Banate Police Station. Police investigators arrived at the scene of the incident and conducted an on-the-spot investigation. SPO3 Dominador Badinas, Jr. made a sketch of the crime scene, showing the victim lying on the edge of the national highway, face up, about 93 feet away from the bamboo fence

fronting the house of Jose Vargas. SPO3 Badinas, Jr. saw a trail of bloodstains, from the bamboo fence leading to the narrow passageway at the edge of the highway.^[5] Pictures of the crime scene were also taken.^[6] Despite proddings from the police investigators, no one came forward to give any details about the identity of the perpetrator or the circumstances surrounding the shooting. The shooting incident was thereafter entered in the police blotter.^[7]

Municipal Health Officer Dr. Ricardo H. Jaboneta performed an autopsy of the cadaver and submitted a necropsy report of his findings, thus:

POSTMORTEM FINDINGS

Pallor, integuments and nailbeds.

Abrasion: (1) 1.5 x 1.0 cms., forearm, left side, posterior aspect, 2.0 cms. below elbow; (2) 0.6 x 0.7 cms. dorsum of right hand, over 2nd metacarpo-phalangeal joint.

Contusion, 4.0 x 4.0 cms., arm, left side, lateral aspect, middle third, 12.5 cms. above left elbow.

Wound, gunshot: (1) ENTRANCE, ovaloid, 0.7 x 0.5 cm., oriented upwards and backwards, edges, sutured, surrounded by abrasion collar, 0.5 cm. on its widest portion at infero-anterior border and powder burn with an area of 25.0 x 21.0 cms., temporal region, right side, 7.0 cms. from anterior midline, 155.0 cms. from right heel, directed from right to left, upwards and backwards, penetrating skull, causing punch-in fracture, right temporal bone with linear extension backwards to posterior portion of right temporal bone and lesser wing of vomer, upwards and backwards to left parietal bone via right parietal bone into cranial cavity, lacerating right temporal lobe, medulla, and left temporal of the brain causing punch-out fracture, left temporal bone with linear extension upwards to left parietal bone and finally make an EXIT, stellate in shape, 0.7 x 0.8 cm., temporal region, left side, 14.5 cms. from anterior midline, 156.0 cms. from left heel; (2) ENTRANCE, ovaloid, 0.5 x 0.6 cm., oriented upwards and medially, edges, sutured, inverted, back, left side, 7.0 cms. from posterior midline, 115.0 cms. from left heel, directed upwards medially forwards, penetrating abdominal wall, causing punch-in fracture, 6th rib, left side, along paravertebral line into abdominal cavity, penetrating left ileopsoas muscle at the level of 6th thoracic (*sic*) vertebra where a copper fragment lodged and recovered, penetrating thru and thru, abdominal aorta, mesentery, anterior edge of left lobe, liver into rectus abdominal muscle where a copper fragment lodged and recovered at left epigastric region.

Subarachnoidal hemorrhage, massive, extensive.

Hemothorax, left side, 1200 cc., clotted blood.

Lungs, voluminous, congested, criptous.

Heart, covered with minimal amount of fatty tissues. Ventricular chambers, empty.

Coronary arteries, patent.

Other visceral organs, pale. Stomach, $\frac{3}{4}$ full, rice and beans, partly digested.

CAUSE OF DEATH: Massive brain laceration secondary to gunshot wound on the head.

R E M A R K S: Body, previously embalmed.

Date report submitted: 10 January 1992.^[8]

Job opted not to report the shooting incident to the police authorities or to the NBI because he did not want to be involved. Job also felt that Edgardo knew very influential people, including Mayor Sanico. However, in August of 1992, Job had a change of heart and decided to reveal what he knew about the shooting incident to the police authorities of Sta. Barbara, Iloilo.

On August 2, 1992, Job arrived at the Office of the Investigation Section of 324th PNP Mobile Field Force Company, District II, Brgy. San Sebastian, Sta. Barbara, Iloilo, and disclosed what he knew about the killing of SPO1 Cocjin on January 4, 1992.^[9] He gave a sworn statement to SPO3 Dwight Maluda, identifying Edgardo as the assailant.

An Information for murder was filed against Edgardo, which reads:

The Provincial Prosecutor of Iloilo, through the undersigned, accuses EDGARDO VARGAS Alias "Dodoy" of the crime of MURDER, committed as follows:

That on or about January 4, 1992, in the Municipality of Banate, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and decided purpose to kill, armed with a short firearm, with treachery and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack and shoot SPO1 DAN COCJIN with the weapon accused was then provided, hitting the victim on the head, which caused his instantaneous death.

CONTRARY TO LAW.^[10]

During the arraignment, Edgardo, assisted by counsel, pleaded not guilty to the charge.

Edgardo denied the charge against him. He testified that he had been appointed by his cousin, then Municipal Mayor Jonathan Sanico as Chief of the Civilian Volunteers Organization, through an Office Order dated February 5, 1991.^[11] His duties as such included giving assistance in monitoring sea vessels plying within the municipality's area of responsibility, and enforcing the law when necessary.^[12] The volunteers used a patrol boat in their sea patrols.

The appellant averred that he and the victim were good friends. They had drinking sessions,^[13] and even dined together during then Vice-Mayor Nemesio Babes' birthday party held on December 29, 1989. In fact, they even had a picture taken together during the said occasion. On January 4, 1992, he was on duty patrolling as

a civilian volunteer of the Department of Agriculture's *Bantay Dagat* program. He was with three other companions: Jonas Vargas, Arnel Deduyo and Rico Deduyo. They patrolled the seas of Banate, about two kilometers from the shoreline.^[14] Their patrol duty lasted until about 5:00 p.m.^[15] Edgardo was unarmed at the time.

Edgardo learned of the shooting incident at around 5:00 p.m. of January 4, 1992. He was so incensed at the brutal slaying of his friend, that he wanted to avenge the latter's death. He immediately proceeded to find their team leader Ciriaco Botero, to request that a gun be issued to him, to enable him to hunt down whoever shot the victim. However, he failed to locate Ciriaco Botero.^[16]

Edgardo further testified that Job only wanted to get back at him because he, as civilian volunteer of the *Bantay Dagat*, had caught Job while engaged in dynamite fishing near the artificial reefs of Banate. They exchanged heated words. Edgardo lost control of himself and slapped Job when the latter called him *bolay-og*.^[17] However, Job did not retaliate.

In November 1991, Edgardo again caught Job engaged in dynamite fishing. Edgardo berated Job, but did not file any charges against him.

On May 1, 1992, Edgardo lost his job and left for Sapi-an, Capiz, leaving his family in Banate. When he learned in November 1992 that the RTC of Iloilo City issued a warrant for his arrest, he surrendered to the court and posted a bail bond for his provisional liberty.

Jose Vargas testified that there was no "daily double" being held in his house on January 4, 1992. He was not related to Edgardo. He had not seen Job in his house when the shooting incident occurred.^[18] When he asked a person about the shooting, he was told that a car had just passed by. He saw Edgardo in the latter's house at 5:00 p.m. that day. Policemen arrived to investigate the shooting incident, and when he was asked who shot the victim, he replied that he did not know. Moreover, Job was employed by Mayor Bacus, the official who took over for Mayor Sanico.

Warlito Bagcal testified that on January 4, 1992, he was at Barangay dela Paz and arrived at the Poblacion of Banate, Iloilo at around 2:00 to 2:30 p.m. He heard an explosion.^[19] He learned from a tricycle driver that SPO1 Cocjin had been shot.^[20] He then started his motorcycle and proceeded to the place of the shooting, where he found SPO1 Cocjin lying prostrate on the ground. He saw Juan Vargas within the vicinity,^[21] but Job was nowhere near the place.^[22]

On February 10, 1995, the trial court rendered judgment, finding the appellant guilty beyond reasonable doubt of the crime charged. The decretal portion of the decision reads:

WHEREFORE, the accused, Edgardo Vargas y Lucero, whose true name he claims to be "Edgar" is hereby found guilty beyond reasonable doubt for the crime of Murder penalized under Article 248 of the Revised Penal Code and is hereby sentenced to suffer a penalty of Reclusion Perpetua and to pay the heirs of SPO1 Alfredo Dan Cocjin y Magnaye the sum of P22,785.00 as actual damages and P50,000.00 as civil indemnity arising

from such death.

The accused being out on bail, his property bail bond is hereby cancelled. He shall remain in detention and shall not be subject to any bail pending finality of herein judgment.

Cost against the accused.

SO ORDERED.^[23]

The appellant now comes before this Court, ascribing to the court *a quo* the following errors:

- I. THE HON. TRIAL COURT ERRED TO APPRECIATE THE TESTIMONY OF THE POLICE INVESTIGATOR AND BELIEVE THE TESTIMONY OF A PLANTED WITNESS OF THE PROSECUTION.
- II. THAT GRAVE MISAPPREHENSION OF FACTS WERE [*sic*] COMMITTED BY THE HON. TRIAL COURT WHEN THE CONVICTION OF THE ACCUSED WAS BASED ON CONJECTURES AND NOT BY THE PROOFS AS PROVEN.
- III. THAT CONSEQUENTLY, THE HON. TRIAL COURT SERIOUSLY ERRED IN SENTENCING THE ACCUSED OF RECLUSION PERPETUA BECAUSE THE ALLEGED POSITIVE IDENTIFICATION BY THE SOLE PROSECUTION WITNESS DEMOLISHES THE DEFENSE OF ALIBI OF THE ACCUSED.^[24]

The appellant argues that the trial court ignored the fact that when the police investigated the shooting incident, nobody came forward to identify him as the culprit. He asserts that the prosecution's eyewitness, Job Bieren, was a planted witness. Job's testimony is too incredible to be believed because it took him all of seven months after the shooting incident to give his statement and to identify the appellant as the assailant. The appellant also argues that the prosecution failed to formally offer Job's testimony in evidence; thus, the trial court likewise erred when the said testimony was considered and given credence and probative weight. The appellant insists that the trial court erred when it rejected his defense of alibi.

The appeal is without merit.

The appellant's contention that the public prosecutor failed to offer Job's testimony as mandated by Section 35, Rule 132 of the Revised Rules of Court is belied by the records. The rule adverted to reads:

SEC. 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify. . . .

The party calling a witness must give a gist of the proposed testimony to enable the court and the adverse party to determine its relevancy to the issues at hand.^[25]

The transcript of the stenographic notes taken when Job testified show that the public prosecutor indeed offered Job's testimony, thus: