

## FIRST DIVISION

[ G.R. No. 132793, May 07, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DIONISIO LABITAD Y MIJARES ALIAS LANTOY, ACCUSED-  
APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Cebu City, Branch 18, convicting accused-appellant of the crime of Murder; sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to indemnify the heirs of the deceased in the amount of P50,000.00, and to pay the costs.

The Information against accused-appellant reads:

That on or about the 13th day of July 1997, at about 3:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon locally known as *plamingko*, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and stab one Apolonio Vertudazo<sup>[2]</sup> with the *plamingko* hitting the latter on the different parts of his body and inflicting upon him the following physical injuries, causing:

“SECONDARY TO MULTIPLE STAB WOUNDS, THORACO ABDOMINAL AREA, ANTERIOR AND POSTERIOR ASPECTS.”

AND AS A consequence of said injuries Apolonio Vertudazo died few minutes later.

CONTRARY TO LAW.<sup>[3]</sup>

Upon arraignment on November 11, 1997, accused-appellant pleaded not guilty.<sup>[4]</sup> Trial thereafter proceeded.

The version of the prosecution, culled mainly from the testimony of prosecution eyewitness Avelino T. Nadera, is as follows: On July 13, 1997, Avelino Nadera visited his uncle at Barangay Bonbon, Cebu City. At about 3:00 in the afternoon as he was on his way home, he saw accused-appellant Dionisio Labitad stabbing Apolonio Vertudazo with a knife locally known as “*plamingko*”. Nadera easily recognized them as he was only 1½ meters away from the two. The victim was hit on the different parts of his body causing him to stagger and fall to the ground. Accused-appellant then turned to Nadera and swung his “*plamingko*”, hitting Nadera on the small finger of his right hand. He threatened to cut Nadera’s tongue and neck if he would reveal the incident to anyone. Shocked and frightened of what he witnessed,

Nadera scampered away.<sup>[5]</sup>

The following day, July 14, 1997, Thelma Vertudazo, wife of the victim, sought the help of the barangay authorities to look for his missing husband. They found the dead body of her husband at the lower portion of Panga hill.<sup>[6]</sup> Dr. Jesus P. Cerna, the Medico Legal Officer who conducted the autopsy on the body of the deceased, testified that the victim sustained one (1) stab wound on the left chest, (3) three stab wounds on the abdominal area and one (1) on his right arm.<sup>[7]</sup>

Bothered by his conscience, Avelino Nadera approached the victim's wife on July 30, 1997, and revealed to her that it was accused-appellant, her own brother, who killed the deceased.<sup>[8]</sup> This led to the filing of the instant case against accused-appellant.

For his part, accused-appellant interposed the defense of denial and alibi. He declared that he could not have killed the victim because he was at home on July 13, 1997.<sup>[9]</sup> His testimony was corroborated by his wife, Leticia Labitad, and his neighbor, Porferio Teves, who both stated that accused-appellant was gathering and chopping firewood in his house on July 13, 1997.<sup>[10]</sup>

On December 19, 1997, the trial court rendered judgment as follows:

WHEREFORE, in view of all the foregoing consideration, accused DIONISIO LABITAD Y MIJARES alias LANTOY, is found guilty beyond reasonable doubt of the crime of Murder and he is hereby imposed (*sic*) to suffer the penalty of Reclusion Perpetua with accessory penalties of the law; to indemnify the heirs of APOLONIO VIRTUDAZO in the sum of P50,000.00 and to pay the costs. The accused is, however, credited in full during (*sic*) the whole period of his detention provided he will signify in writing that he will abide by all the rules and regulations of the penitentiary.

SO ORDERED.<sup>[11]</sup>

Accused-appellant interposed the present appeal alleging that –

#### I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE IMPROBABLE, INCREDIBLE AND RIDICULOUS TESTIMONY OF THE PROSECUTION EYEWITNESS.

#### II

ASSUMING THAT HEREIN ACCUSED-APPELLANT WAS ONE OF THE ASSAILANTS, THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.<sup>[12]</sup>

Accused-appellant alleges that the testimony of the prosecution eyewitness that he was only an arm's length away from the victim and the accused during the stabbing incident is improbable and ridiculous. Accused-appellant claims that the normal and natural reaction of a passerby is to distance himself from an ongoing fight, and not

to get involved unless he intends to help. However, the witness testified that he did not try to intervene because of fear.

The contentions are without merit. As testified to by the prosecution eyewitness, he did not notice a quarrel prior to the stabbing incident, and it was only upon reaching the topmost portion of the hill that he saw accused-appellant attacking the victim. The witness could not have been warned as he was unsuspectingly climbing on one side of the hill, unaware of the events unfolding on the other side thereof. Hence, he could not be reasonably expected to avoid the scene as claimed by accused-appellant. At any rate, the settled rule is that witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn. Different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.<sup>[13]</sup>

Moreover, the delay in the witness' disclosure of the identity of the culprit will not affect his credibility nor lessen the probative value of his testimony. Notably, said witness was threatened by accused-appellant who even attacked him with a bladed weapon to accentuate his warning. He could not therefore be blamed if he was initially muted by fear. Death threats, fear of reprisal, and even a natural reluctance to be involved in a criminal case have been accepted as adequate explanations for the delay in reporting crimes.<sup>[14]</sup>

The fate of accused-appellant rests on the issue of credibility. The Court has consistently held that when it comes to the issue of credibility of witnesses, appellate courts generally will not overturn the findings of the trial courts. They are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor and behavior in court.<sup>[15]</sup>

After a careful and meticulous review of the evidence on record, we find that the trial court did not err in giving credence to the testimony of prosecution eyewitness Avelino Nadera. He testified in a candid, direct and straight-forward manner and remained consistent even under cross-examination. Indeed, his testimony is worthy of belief, considering that he was not shown to have been impelled by improper motive to testify against accused-appellant.<sup>[16]</sup>

The trial court correctly disregarded the defenses put up by accused-appellant. Denial and alibi are inherently weak defenses and cannot stand on the face of the positive identification of the culprit. Moreover, accused-appellant failed to establish the physical impossibility of his presence at the *locus criminis* at the time of the perpetration of the crime.<sup>[17]</sup> The distance between the place where the victim was found dead and the house of accused-appellant, where he claims to be at the time the victim was killed, is only one kilometer and can be traversed by a 30-minute walk.<sup>[18]</sup> Obviously, accused-appellant's presence at the scene of the crime is not at all precluded. Hence, his defense of alibi must fail.

However, the trial court erred in appreciating the qualifying circumstances of treachery and evident premeditation. For these qualifying circumstances to be considered, they must be established as conclusively as the crime itself.<sup>[19]</sup> In the