

SECOND DIVISION

[G.R. No. 126752, September 06, 2002]

**TOMAS HUGO, PETITIONER, VS. HON. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

For review by certiorari is the decision^[1] dated February 28, 1996 of the Court of Appeals in CA-G.R. CR No. 14629, which affirmed the judgment of the Regional Trial Court of Iloilo City, Branch 39, in Criminal Case No. 31668, finding petitioner Tomas Hugo guilty of homicide. Also assailed is the CA's resolution^[2] dated September 25, 1996, denying petitioner's motion for reconsideration.

In an information dated May 3, 1988, the Iloilo City Prosecutor charged petitioner with murder allegedly committed as follows:

That on or about the 29th day of April, 1988, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a gun, conspiring and confederating with John Doe and Richard Doe, whose identities are still unknown, working together and helping one another, with evident premeditation and treachery, with a decided purpose to kill, did then and there willfully, unlawfully and criminally shoot, hit and wound Nestor Bastes with the said gun, with which the herein accused was provided at the time, thereby causing upon said Nestor Bastes injuries on vital parts of his body, which caused his death (a) few hours thereafter.

CONTRARY TO LAW.^[3]

When arraigned, petitioner with assistance of counsel pleaded not guilty. Trial on the merits of the case then commenced.

The prosecution presented four (4) witnesses: eyewitness Jalyn Juanico; the victim's widow, Paciencia Bastes; a police medico-legal officer, Dr. Jose J. Rafio; and a forensic chemist from the police crime laboratory, P/Lt. Zenaida Zinfuego.

Jalyn Juanico testified that at around 8:00 P.M., April 29, 1988, she was conversing with some friends at the Bankers Village 6 Road in *Barangay* Dungon-B, Iloilo City, when a shot suddenly rang out.^[4] Jalyn did not pay any attention to it, thinking that it was just another firecracker exploding.^[5] She had been hearing firecrackers going off all day.^[6]

Moments later, her uncle Nestor Bastes passed by walking towards his home.^[7] He exchanged greetings with Jalyn and her group.^[8] After a brief interval, petitioner

Tomas Hugo with two companions passed by. Petitioner was toting a gun.^[9] Jalyn, who was a former schoolmate of petitioner,^[10] did not give much thought to his carrying a gun. She was unaware of any quarrel between petitioner and Nestor.^[11] She just resumed her conversation with her friends.

Minutes after Nestor Bastes and petitioner with his companions passed by, Jalyn heard a second shot. Startled, she turned her head towards the direction of the shot. She saw petitioner standing beneath an electric lamp post, aiming a gun at a person some four and one-half meters away from him.^[12] The unknown person then fell flat on his face under the shadow of a jackfruit tree.^[13] Petitioner and his two companions swiftly scampered away, with the former running towards the direction of his uncle's home.^[14]

Since they could not immediately ascertain who the victim was, one of Jalyn's friends, Marilou Juelar,^[15] got a lamp. They saw that it was Nestor Bastes. Marilou immediately informed Nestor's wife, Paciencia, about the shooting.

Paciencia rushed to the scene and with the help of neighbors brought Nestor to Mission Hospital.^[16] Paciencia asked Nestor who shot him. The latter replied that it was Tomas Hugo and his two companions whose identities he did not know.^[17] Nestor then exhorted her to take care of their children.^[18] For lack of money, Nestor did not get any medical assistance from the staff of the Mission Hospital.^[19] He was transferred to the Benito Lopez Hospital, but for lack of funds was likewise refused medical attention.^[20] He was then brought to the Western Visayas Hospital where prompt medical care was given. However, it was too late. Nestor Bastes died 30 minutes later.^[21]

The following day, Dr. Jose J. Rafio, medico-legal officer of the Iloilo City Police Station, autopsied the victim. His findings showed that the victim sustained several contusions and abrasions, mainly on the face and neck, and one bullet wound in the head.^[22] That wound proved fatal.^[23]

P/Lt. Zenaida Zinfuego, a forensic chemist from the crime laboratory at Camp Delgado, Iloilo City conducted a paraffin test on petitioner on May 2, 1988. He was found positive for powder burns on both hands.^[24]

To the charge of murder, petitioner interposed the defense of alibi. He averred that from 2:00 P.M. until past 8:00 P.M., April 29, 1988, he was at the Freedom Day celebrations held at Plazoleta Gay, Iloilo City.^[25] He claimed he was a member of the *Barangay* Sambag, Jaro, Iloilo City delegation, tasked with setting off the pyrotechnics during the affair.^[26] After the program, he said he went home, had supper, and went to sleep.^[27]

Petitioner's alibi was corroborated by the testimonies of his sister, Mercedita Abadan;^[28] Alton Braña,^[29] *barangay* captain of Dungon-B, Jaro, Iloilo City; and Emilio Blance,^[30] *barangay* captain of Sambag, Jaro, Iloilo City. All claimed that petitioner never left Plazoleta Gay during the Freedom Day festivities.

The trial court found the prosecution's version credible, disbelieved petitioner's alibi, and on December 29, 1992, convicted petitioner of homicide, thus:

WHEREFORE, premises considered, the accused Tomas Hugo is hereby found guilty beyond reasonable doubt of the crime of Homicide only and not murder as charged, and there being no mitigating or aggravating circumstances, is hereby sentenced to suffer imprisonment for a period of Eight (8) Years and One (1) Day as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day, as maximum.

The accused is further ordered to pay the heirs of the deceased Nestor Bastes the amount of P3,900.00 as actual expenses and P50,000.00 for the wrongful death of the deceased; P20,000.00 as moral damages and the costs of the suit.

SO ORDERED.^[31]

Petitioner interposed an appeal, docketed as CA-G.R. CR No. 14629, to the Court of Appeals. However, on February 28, 1996, the appellate court affirmed the judgment of conviction, to wit:

WHEREFORE, foregoing considered, the questioned decision is hereby AFFIRMED and the appeal by the accused-appellant is DISMISSED.

SO ORDERED.^[32]

Petitioner then moved for reconsideration, which the CA denied.

Hence, the instant petition anchored on the following assignment of errors:

A. THE COURT OF APPEALS ERRED WHEN, IT AFFIRMED THE DECISION OF THE LOWER COURT, ON THE THEORY THAT, THE FINDINGS OF THE LOWER COURT ON MATTER(S) OF CREDIBILITY SHOULD BE GIVEN GREAT WEIGHT, NOTWITHSTANDING THE FACT THAT THE PRESIDING JUDGE WHO CONVICTED THE ACCUSED WAS NOT THE SAME PRESIDING JUDGE WHO RECEIVED THE EVIDENCE OF THE PROSECUTION WITNESSES.

B. THE COURT OF APPEALS ERRED WHEN IT SUSTAINED THE FINDINGS OF THE LOWER COURT ON THE TESTIMONY OF JALYN JUANICO, THE SOLE EYEWITNESS FOR THE PROSECUTION, NOTWITHSTANDING THE FACT THAT THE TESTIMONY OF JALYN JUANICO IS FULL OF INCONSISTENCIES AND HIGHLY UNBELIEVABLE.

C. THE COURT OF APPEALS ERRED IN REJECTING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED NOTWITHSTANDING THE FACT THAT, THE TESTIMONY OF THE ACCUSED IS CLEAR AND CONVINCING AND CORROBORATED BY DISINTERESTED WITNESSES.^[33]

Petitioner essentially raises the issue of credibility of the prosecution's sole eyewitness and the propriety of the conviction of the petitioner penned by the trial judge who did not hear the case. Relevant are the following questions: (1) Was Jalyn Juanico a credible witness? (2) Was her testimony sufficient to sustain a judgment of conviction? and (3) Was the conviction proper?

Petitioner contends that the Court of Appeals grievously erred when it relied on the findings of the trial court on the credibility of the prosecution witnesses in sustaining his conviction. He contends that since the judge (Hon. Cornelio Lazaro) who heard

Jalyn Juanico testify was not the judge (Hon. Jose Abdullah) who penned the judgment of conviction, the appellate court should have carefully evaluated and weighed said testimony. He claims that the appellate court erred when it cursorily applied the rule that the assessment of credibility of witnesses is best left to the discretion of the trial court.

For the appellee, the Office of the Solicitor General avers that petitioner's claim lacks basis. It is not true, according to OSG, that the conflicting testimonies of witnesses were given only a mere cursory examination by the appellate court. The OSG insists that a perusal of the assailed decision will show that the court a quo complied with the constitutional requirement that the factual and legal bases of the decision be clearly and distinctly expressed therein.

As a general rule, the trial court is in the best position to determine facts and to assess the credibility of witnesses as it is in a unique position to observe the witnesses' deportment while testifying, an opportunity denied the appellate court. [34] Hence, the trial court's assessment of the credibility of witnesses is entitled to great respect and will not be disturbed on appeal, [35] unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion. In the cases of *Pinca*, *Cawaling*, and *Daraman*, however, a further exception was made: the judge who penned the appealed decision was not the same one who presided over the trial and heard the witnesses testify. [36]

In the instant case, Judge Cornelio G. Lazaro heard the prosecution's principal witness Jalyn Juanico testify. Judge Lazaro retired and was replaced by Judge Jose G. Abdullah, who, relying on the transcripts of stenographic notes, penned the judgment of conviction. In our view, however, this fact would not significantly influence much less alter the outcome of the present case. The circumstances obtaining in the instant case are different from the cases of *People vs. Pinca*, [37] *People vs. Cawaling*, [38] and *People vs. Daraman*. [39] In *Pinca*, there was a "scanty discussion in the assailed Decision" [40] on the credibility of the witnesses and the sufficiency of the prosecution's evidence. As the decision was virtually bare of the judge's findings and analysis, the Court could not rely upon said findings. Hence, we "thoroughly perused the transcripts of the witnesses' testimonies and examined the other pieces of evidence on record." [41] In *Cawaling* and *Daraman*, this Court meticulously scrutinized the records of the cases to find if the conclusions of the judge, who penned the decision but did not have the opportunity to observe the witnesses and the manner in which they testified, were amply supported by the records. In both *Cawaling* and *Daraman*, we found no reason to differ from the conclusions of the trial judges who penned the decisions. The efficacy of a decision is not necessarily impaired by the fact that the ponente only took over from a colleague who had earlier presided over the trial. [42] For it does not follow that a judge who was not present during the trial cannot render a valid and just decision. [43] In the present case, Judge Abdullah relied upon the transcribed stenographic notes taken during the trial as the basis for his decision. The full record was available to him. As the decision shows, he thoroughly examined and analyzed the evidence before him and carefully calibrated the credibility of the witnesses with the seasoned perspective he had developed as a trial judge.