

SECOND DIVISION

[G.R. No. 141344, November 21, 2002]

**TEMISTOCLES TAPDASAN, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND SPOUSES LUISITO AND JUANITA BORJA,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari for the reversal of the decision^[1] of the Court of Appeals in CA-G.R. No. 16385(CR) affirming, on appeal, the decision^[2] of the Regional Trial Court of Iligan City in Criminal Case No. 4453 filed against the petitioner for reckless imprudence resulting in homicide.

As summarized by the Court of Appeals, the facts of the case are as follows:

"About 6:30 o'clock in the evening of December 5, 1992, while walking along the side of the national highway in Taguibo, Iligan City, twelve (12) year old Salmero Payla and nine (9) year old Loue Boy Borja saw a red 'sakbayan' motor vehicle moving very fast and attempting to overtake a big truck. Before the red sakbayan could complete the maneuver, however, a cargo truck emerged from the opposite direction. To avoid a collision, the red 'sakbayan' swerved to the right shoulder where the two boys were walking, hitting Louie Boy in the process and throwing him away for about six (6) meters (TSN, pp. 7-10, August 31, 1993).

Salmero rushed to his friend and found him all bloodied and mortally wounded; at this instance, Salmero saw the red 'sakbayan' stop and its occupants, one male and a female holding a child, get off and look at their direction. The occupants then boarded their vehicle and backed-up until it was merely five meters from where Salmero and Loue Boy were. At this point, the driver of the sakbayan got off but merely looked at the two boys, after which he again boarded his vehicle and sped away (supra, pp. 10-17).

Fortunately, Salmero was able to see clearly the face of the driver and the plate number of the sakbayan because of the lights coming from other passing vehicles (supra, pp. 16-17).

Loue Boy was brought to the Mindanao Hospital for treatment of his wounds, but he died four days later. The driver, on the other hand, found to be Temistocles Tapdasan, Jr., was subsequently identified by Salmero as the person driving the red sakbayan which hit Loue Boy (TSN, pp. 9-12, September 3, 1993)."^[3]

An Information was filed with the Regional Trial Court of Iligan City against petitioner for "Reckless Imprudence Resulting in Homicide," the accusatory portion of which reads:

"That on or about December 5, 1992, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the driver and person in charge of a Sakbayan with Plate No. MAA-237 owned by one Temistocles Tapdasan, Sr., did then and there wilfully (*sic*), unlawfully and feloniously drive, manage and operate his driven vehicle in a negligent, careless, reckless and imprudent manner, without due regard to traffic laws, rules and regulations and without taking the necessary precautions to avoid accident to persons and damaged (*sic*) to properties, and causing by such negligence carelessness, recklessness and imprudence, said Sakbayan driven and operated by said accused to bump and hit Loue Boy Borja who was walking on the shoulder of the road along the national highway of Tagibo, Iligan City, thus inflicting upon said Loue Boy Borja the following physical injuries, to wit:

--- Cardiac Arrest secondary to Cerebral contusion secondary to vehicular accident.

which caused his death."^[4]

The case was docketed as Criminal Case No. 4453.

At arraignment, petitioner, assisted by counsel, entered a plea of "Not Guilty." Trial ensued with the prosecution presenting Salmero Payla as its principal witness. Petitioner testified in his behalf and interposed the defenses of denial and alibi claiming that, on December 5, 1991, from 8:00 a.m. to 7:00 p.m., he was tending to their family-owned gasoline station in Lugait, Misamis Oriental.

On January 31, 1994, the trial court rendered its decision finding petitioner guilty as charged. The decretal portion thereof reads:

"WHEREFORE, the Court finds the accused, TEMISTOCLES TAPDASAN, JR., guilty beyond reasonable doubt of the crime of reckless imprudence resulting in homicide, defined and penalized under Art. 365 of the Revised Penal Code, as amended by Rep. Act No. 1790 and imposes him an indeterminate sentence from 4 years, 2 months and 1 day as MINIMUM, to 7 years, 4 months and 1 day as MAXIMUM, there being no mitigating or aggravating circumstances proven; and to pay the heirs of the deceased Louie Boy Borja the sums of:

- (1) P50,000.00 for the life indemnity of the deceased;
- (2) P24,777.30 for actual compensatory damages;
- (3) P100,000.00 for moral damages;
- (4) P50,000.00 for exemplary damages;
- (5) P10,000.00 for attorney's fees; and costs.

SO ORDERED."^[5]

Aggrieved, petitioner appealed the trial court's decision to the Court of Appeals. The appellate court affirmed *in toto* the decision of the RTC.

Petitioner forthwith filed his aforementioned petition claiming that:

"THE COURT OF APPEALS AND THE INFERIOR COURT DECIDED THE CASE NOT IN ACCORDANCE WITH LAW, NOR IN ACCORDANCE WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT, WHEN THEY CONVICTED THE ACCUSED DESPITE THE FACT THAT THE IDENTITY AND THE GUILT OF THE ACCUSED WAS NOT PROVED BEYOND REASONABLE DOUBT."^[6]

A. THERE WAS FAILURE TO IDENTIFY THE ACCUSED BEYOND REASONABLE DOUBT.^[7]

B. THE EVIDENCE FOR THE PEOPLE FAILED TO OVERCOME THE DEFENSE OF ALIBI."^[8]

On the issue of the identification of petitioner as the driver of the offending vehicle, he argues that although there was ample time for the police investigators to assemble a police line-up for the identification of the culprit by Salmero Payla, they never did. Further, the identification of petitioner by Payla during trial was unreliable as he indulged in selective amnesia and he was rehearsed and instructed to point to and identify petitioner as the driver of the offending vehicle and to testify on the particulars of said vehicle. The prosecution thus failed to prove with certitude that petitioner was the driver of the offending vehicle. Hence, petitioner insists that he should be acquitted of the charge against him. In fine, petitioner impugns the credibility of Payla and the probative weight of his testimony.

We are not persuaded. To begin with, the issues posed by petitioner are factual. There is no law or regulation to support his claim that police investigators are required to create a police line-up for the identification of offenders by witnesses or for the confirmation of the identity of an offender.^[9] A police line-up is merely a part of the investigation process by police investigators to ascertain the identity of offenders or confirm their identification by a witness to the crime. Police officers are not obliged to assemble a police line-up as a condition *sine qua non* to prove the identity of an offender. If on the basis of the evidence on hand, police officers are certain of the identity of the offender, they need not require any police line-up anymore.

In this case, Payla, the principal witness for the prosecution, testified that he was at the *situs criminis* with the victim Louie Boy Borja when he (Borja) was sideswiped by the vehicle driven by petitioner. The latter drove back his vehicle and stopped four or five meters away from where Borja and Payla were. Petitioner forthwith alighted from the vehicle as another vehicle passed by with its headlights focused on and illuminating petitioner, thus, enabling Payla to identify him. Payla said:

"Q: Now, Salmero, do you remember where were you (*sic*) on December 5, 1992 at about 6:30 o'clock in the afternoon?

A: Yes, sir.

Q: Will you tell the Court where you were?

A: We were from our friend Edna Cagula and we were walking at the side of the road towards our house.

Q: Now, as you said 'going towards our house' who was your companion, Mr. Salmero?

A: Myself together with the deceased Loue Boy Borja.

Q: And towards which direction you were heading in your way home?

A: Towards East District.

Q: And which side of the road were you walking?

A: Left side of the road.

Q: Did anything unusual happened (sic) when you were walking at that time, Salmero?

A: Yes, sir.

Q: Please tell the Court what happened?

A: There was a vehicle and was running fast, it overtook another vehicle but when he overtook the vehicle coming from Cagayan de Oro City. Then there was a collision with the big truck and the vehicle attempted to swerve and to (sic) hit Loue Boy Borja.

Q: Now, tell the Court, what happened of (sic) Louie Boy Borja?

A: Loue Boy Borja was bumped and because of the force of the impact he was thrown away.

Q: What happened next Salmero?

A: I ran towards him and I embraced him and I was full of blood and after that his only words were 'Salmero help me'.

Q: Now, did you still see the vehicle after that?

A: Yes, distance (sic).

x x x

COURT:

To the witness.

Q: After Louie Boy Borja was hit did you observe anything else about the vehicle?

A: Yes, Your Honor.

COURT:

Proceed.

x x x

Q: Please tell the Court what happened after the vehicle had stopped with a distance from the scene of the incident?

A: The sakbayan was made to move backward and then I saw the driver at a distance between 5 to 6 meters. (Witness pointing to the portion in the courtroom which is about 5 to 6 meters).

Q: Now, what else did you observe after that?

A: There was a woman who rode on that vehicle with a child and he proceeded towards the direction to (sic) Cagayan de Oro City.

Q: And did you recognize the driver of that vehicle?

A: Yes, sir.

Q: Now, please look around and tell the Honorable Court whether the driver is here?

A: There. (Witness is pointing to the accused).

Q: What was the color of that vehicle, Salmero?

A: Color red.

Q: And what was its plate number?

A: MAA-237.

(TSN, pp. 7-10, August 31, 1993)"^[10]

The light emanating from the headlights of the passing vehicle was sufficient illumination to enable Payla to identify petitioner. Wicklamps, flashlights and even moonlight or starlights may in a proper situation be considered sufficient illumination.^[11] There is thus no reason to doubt the identification of petitioner by Payla through the light from the headlights of the passing vehicle.

It bears stressing that when he testified in the trial court, Payla was merely thirteen years old. We ruled that the testimony of children of sound mind is likewise to be more correct and truthful than that of older persons so that once established that they have fully understood the character and nature of an oath, their testimony should be given full credence.^[12] There is no evidence on record to prove any ill motive on the part of Payla to muddle the truth and pillory petitioner by ascribing a criminal act to him for which he could be sentenced to a prison term. Hence, the testimony of Payla should be accorded credence and full probative weight.^[13]

In this case, the trial court gave credence and full probative weight to the testimony of Payla. Indeed, the trial court found petitioner guilty beyond cavil of doubt for the crime charged principally on Payla's testimony. The legal aphorism is that findings of facts of the trial court, its calibration of the evidence of the parties, assessment of the credibility of witnesses and conclusions anchored on its findings are accorded high respect and conclusive effect of the appellate courts because of the unique advantage of observing and monitoring at close range the conduct and demeanor of the witnesses as they regale the court with their collective testimonies.^[14]