

FIRST DIVISION

[G.R. No. 145371, September 28, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN AQUINO AND ROMEO AQUINO, ACCUSED-APPELLANTS.

D E C I S I O N

DAVIDE, JR., C.J.:

Accused-appellants Ben Aquino (BEN) and Romeo Aquino (ROMEO) were charged with and tried for murder before the then Court of First Instance (now Regional Trial Court) of Lemery, Batangas, Branch 3, in Criminal Case No. 792-L under an information^[1] the accusatory portion of which reads as follows:

That on or about the 25th day of November, 1980, at about 11:00 o'clock in the evening, at Barangay Ayao-iyao, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns, conspiring and confederating together, acting in common accord and mutually aiding one another, with intent to kill and without justifiable cause and with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously attack, assault and shot one Geminiano Belo alias "Jaime Belo" who was then sleeping, suddenly and without warning, thereby inflicting upon the latter multiple gunshot wounds in the different parts of his body, directly causing the death of the said Geminiano Belo.

Contrary to law.

BEN and ROMEO entered a plea of not guilty upon arraignment.^[2]

At the trial, the prosecution presented as witnesses Rogelio Belo, Maria Garcia, Felipe Garcia and Dr. Arthur Tolentino. For its part, the defense presented BEN, ROMEO, Igmidio Medina, Pat. Pablito Holgado, Pat. Armando Villavicencio, and Pat. Rosauro Balboa.

Rogelio Belo testified that on 25 November 1980, at about 11:00 in the evening, he was in the house of his uncle Roman Garcia in Ayao-iyao, Lemery, Batangas. He was lying and resting below the house on a *papagan* (bamboo cot) near the feet of his brother Geminiano Belo (GEMINIANO) who was then sleeping on top of a table when, suddenly, gunshots rang out. Rogelio stood up. Through the illumination produced by the lights in and below the house, Rogelio saw BEN and ROMEO fire shots at the sleeping GEMINIANO. BEN and ROMEO were standing side by side with each other armed with handguns. ROMEO pointed his gun at Rogelio. Then BEN and ROMEO ran away. Rogelio helped in rushing the wounded GEMINIANO to St. Patrick

Hospital where he expired the next day.^[3]

Rogelio's testimony was substantially corroborated by his mother Maria Garcia vda. de Belo. Maria narrated that on 25 November 1980 at about 11:00 in the evening, she was doing some embroidery work in her house which was about ten (10) meters away from the house of her brother Roman Garcia. Her sons Rogelio and GEMINIANO were in the house of Roman. Suddenly she heard gunshots. She immediately ran out towards Roman's house. There, she witnessed BEN and ROMEO shoot GEMINIANO who was lying on a table. BEN and ROMEO then ran away when she was about to approach them.^[4]

Felipe Garcia, GEMINIANO's uncle, confirmed that GEMINIANO was sleeping in the house of his brother Roman on the night GEMINIANO was shot.^[5]

Dr. Arthur Tolentino, the consultant-surgeon of St. Patrick Hospital in Batangas City, recounted that when GEMINIANO was admitted in the hospital on 26 November 1980, he was still conscious but was mumbling.^[6] Upon examination, he discovered that GEMINIANO sustained three gunshot wounds located (1) at the fifth rib, mid clavicular line (right below the right nipple); (2) at the seventh intercostal space anterior axillary line (right below the first gunshot wound and also below the right nipple); and (3) on the wrist postero-medial aspect, right. He conducted an operation to explore the thoracic and abdominal cavity, a hepatectomy of the lungs and segmentectomy of the interior lobe right. The first and second gunshot wounds hit the lower portion of the lung, part of the liver and diaphragm. GEMINIANO died a few hours after the operation due to hemorrhage caused by the injuries on the lungs, diaphragm and liver.^[7]

BEN and ROMEO interposed alibi and denial.

BEN declared that from 7:00 o'clock in the evening of 25 November 1980 to 1:00 o'clock in the morning of 26 November 1980, he and his brother ROMEO were at the house of his father Nicomedes Aquino at Balangon, Agoncillo, Batangas. At that time, his father was entertaining guests who included Igmidio Medina, former mayor of Agoncillo, Batangas and electricians who had earlier in the afternoon installed electric lines in the house. Since the electricians would be sleeping in his father's house to continue the project the next day, they engaged in merry making while preparing "*lupakan*" and other food items. He left his father's house on 26 November 1980 at about 1:00 A.M.^[8]

BEN asserted that he and ROMEO did not kill GEMINIANO. It was only six months after the shooting incident that he learned that he and ROMEO were accused of killing GEMINIANO.^[9] They were obviously implicated because of a previous stabbing incident between ROMEO and GEMINIANO which resulted in the filing of a frustrated murder case against the latter.^[10]

For his part, ROMEO vehemently denied that he and his brother BEN killed GEMINIANO. His testimony corroborated BEN's statements.^[11] He claimed that he left his father's house at about 2:00 a.m. of 26 November 1980. Upon cross-examination, however, he said he left at about 1:00 a.m.^[12]

Igmidio Medina corroborated the testimonies of BEN and ROMEO. He attended the "*lupakan*" and observed that BEN and ROMEO were in their father's house until 4:00 in the morning of 26 November 1980.^[13]

Pat. Pablito Holgado, Pat. Armando Villavicencio and Pat. Rosauro Balboa, all policemen of Lemery Police Station, substantially testified on the authenticity of the entries on the police blotter regarding the shooting of GEMINIANO.^[14] Pat. Holgado declared that on 26 November 1980, he and Patrolman Cerilino Bendaña inspected the scene of the crime and examined the bullet marks at the side of the house. They failed to get the names of the possible suspects upon inquiry.^[15]

The trial court gave full faith to the testimonies of prosecution witnesses Rogelio Belo and Maria Garcia vda. de Belo. It found them credible, convincing and trustworthy as against the disavowals of the defense witnesses, for four reasons: *First*, their positive identification of BEN and ROMEO as the assailants rendered implausible the latter's alibi. *Second*, the proximity of the houses of BEN and ROMEO and that of GEMINIANO would make it possible for the two to saunter and walk unseen to the house where GEMINIANO was sleeping, shoot GEMINIANO and nonchalantly return to their house.^[16] *Third*, the motive for the killing was the existing feud between GEMINIANO and brothers BEN and ROMEO. *Fourth*, the testimony of defense witness Igmidio Medina as to the time the brothers left their father's house on the night GEMINIANO was attacked was inconsistent with the brothers' version.

The trial court held that treachery attended the killing of GEMINIANO. He was sleeping when he was shot. However, it ruled out the presence of evident premeditation. Thus, in its decision^[17] of 10 November 1989, it decreed:

WHEREFORE, the Court finds accused Ben Aquino and Romeo Aquino guilty beyond reasonable doubt of having committed the crime of Murder and hereby impose on them the penalty of imprisonment from TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS; and to pay the heirs of deceased Geminiano Belo the sum of P30,000.00 as indemnity.

BEN and ROMEO seasonably appealed to the Court of Appeals, which docketed the appeal as CA-G.R. CR No. 12261. In its decision^[18] of 20 October 2000, the Court of Appeals affirmed the challenged decision of the trial court but increased the penalty to *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, the Decision dated November 10, 1989 finding accused BEN AQUINO and ROMEO AQUINO guilty beyond reasonable doubt of the crime of Murder is hereby **AFFIRMED WITH Modification** that the penalty of **RECLUSION PERPETUA** is hereby imposed.

In a Resolution issued on the same day of 20 October 2000, the Court of Appeals refrained from entering judgment, certified the case and elevated the entire records thereof to us for review pursuant to Rule 124, Section 13, of the Rules of Court.^[19]

In our resolution of 7 February 2001, we required the parties to file supplemental briefs, if they so desire. In their Supplemental Brief dated 22 May 2001, BEN and ROMEO contended that:

I

THE COURT A *QUO* COMMITTED GRAVE REVERSIBLE ERROR WHEN IT PLACED HEAVY RELIANCE ON THE SUPPOSED POSITIVE IDENTIFICATION BY ALLEGED EYEWITNESSES AND IN TOTALLY DISREGARDING THE EVIDENCE FOR THE DEFENSE IN RENDERING THE VERDICT OF CONVICTION.

II

THE COURT A *QUO* GRAVELY ERRED IN DISREGARDING SUPREME COURT DECISIONS CONSTITUTIVE OF EXCEPTIONS TO THE POSITIVE IDENTIFICATION RULE AND IN IGNORING THE PRINCIPLE OF STARE DECISIS.

III

THE COURT A *QUO* GRAVELY ERRED IN FINDING THAT THE ACCUSED KILLED THE DECEASED AND IN RULING THAT ACCUSED ACTED IN CONSPIRACY WITH EACH OTHER.

IV

THE LOWER COURT ERRED IN ACCORDING CREDENCE TO THE ALLEGED EYEWITNESSES; and

V

THE SOLICITOR GENERAL IS WRONG IN ASSERTING THAT:

"Even if there is a feud between the families of the victim and of appellant, it is doubtful if such feud is sufficient to motivate the eyewitnesses brother and mother of the victim to falsely implicate appellants, in the light of the fact that to falsely accuse an innocent person would mean that the real culprit will go scot-free."

BEN and ROMEO assail the credibility of prosecution witnesses Rogelio Belo and Maria Garcia because they failed to spontaneously disclose to the police authorities the identity of the assailants. Their defense of alibi must therefore be given weight in default of an immediate, positive and proper identification of them as the offenders. They also theorize that they were accused of the crime mainly because of the existing "bad blood" between their families and that of the victim. They also claim that Rogelio committed inconsistencies in his testimony as to when he disclosed to the police the identity of the assailants of his brother. At first, he said that he revealed their identities on the very night of the investigation. Then he said

that he did not make the disclosure at all. And, when asked again, he stated that he made the disclosure the following morning.

BEN and ROMEO likewise assert that Maria did not see the actual shooting. Based on her narration, she rushed out of the house after she heard the shots. This clearly shows the shooting was already *fait accompli* by the time she was going down her house. Thus, she could not have seen the assailants fire their guns at her son.

Further, BEN and ROMEO maintain that many persons have reasons to kill GEMINIANO as he was facing a string of criminal cases. Insofar as they are concerned, they could have earlier killed GEMINIANO. They did not. They chose to follow the rule of law by filing a case against GEMINIANO. But, there were other persons who harbored hatred against GEMINIANO and opted to keep silent about it. They then conclude that human experience has shown that when the victims of violence or crime do not apply to the courts for redress, the likelihood is that they would take the law into their own hands.

BEN and ROMEO also insist that the courts below erred in considering their alleged positive identification by Rogelio and Maria in light of *People v. Bulawin*^[20] and *People v. Cunanan*,^[21] thereby disregarding precedents established by us.

Finally, BEN and ROMEO argue that the court *a quo* erred in ruling that they acted in conspiracy. No proof was adduced at the trial that one of them fired the fatal shots. Hence, the killing of GEMINIANO could not be attributed to either of them.

We rule against BEN and ROMEO.

As often happens in criminal cases on appeal, we are asked to disregard the testimony of the prosecution witnesses for being incredible, and, instead, give full credence to those of the defense. It is, however, doctrinally settled that, as a general rule, appellate courts choose to believe the trial judge's ascertainment on the credibility of witnesses because he had the distinct advantage of having personally heard the testimonies of the witnesses and observed their deportment and manner of testifying during the trial. Appellate courts would disturb the trial judge's assessment of credibility of witnesses only if he plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case,^[22] or if the trial court acted arbitrarily.^[23] None of the exceptions have been shown to exist in the instant case.

Rogelio and Maria categorically identified both BEN and ROMEO as the assailants of GEMINIANO. They unwaveringly declared that they saw the brothers shoot GEMINIANO who was oblivious of the attack as he was sleeping. They were firm in their identification even under rigid cross-examination.^[24]

We thus sustain the lower court's assessment of the credibility of the witnesses for the prosecution and likewise give them full faith and credence. Against their account BEN and ROMEO had nothing but alibi, which is easy to concoct and fabricate. Alibi is a weak defense; it cannot prevail over and is worthless in the face of positive identification by credible witnesses.^[25] Further, for alibi to prosper it is not enough to prove that the accused was somewhere else when the crime was committed; the accused must also demonstrate by clear and convincing evidence that it was