

SECOND DIVISION

[G.R. No. 103506, February 15, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO TOLIBAS @ "GORIO", FERNANDO CORTES @
"KANAN", MICHAEL TOLIBAS @ "KAING," RODEL QUIJON,
ACCUSED.**

RODEL QUIJON, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision dated October 14, 1987, of the Regional Trial Court of Cebu City, Branch 13, convicting accused-appellant Rodel Quijon^[1] and accused Gregorio Tolibas of the crime of murder and sentencing them to suffer the penalty of *reclusion perpetua*, to indemnify the widow of the victim in the amount of P30,000.00 and to pay the costs.

This appeal concerns only Rodel Quijon, the alleged principal conspirator in the killing of the victim, Dennis Noel. His co-accused Gregorio Tolibas was convicted by the trial court but did not appeal. The third accused, Fernando Cortes, died before arraignment. The fourth, Michael Tolibas, was arraigned but escaped from detention pending trial; he was tried *in absentia*, but the trial court did not render judgment on him.

The facts, based on the records, are as follows:

On April 24, 1983, at around 8:30 in the evening, prosecution witness Juanito Flores went out of his house to attend the wake of a friend. While he was walking along the passageway leading to Sikatuna St. in Cebu City, he saw Dennis Noel, a neighbor, walking some 7 to 8 meters ahead of him. Further on, Flores also saw appellant and Fernando Cortes sitting along the passageway. When Dennis walked in front of appellant and Fernando, the two stood up. Appellant grabbed Dennis' left hand while Fernando held his right hand. They asked Dennis where he was going and then started boxing him in the abdomen. Flores heard somebody shout "*He is Dennis Noel from the Riverside.*" The loud voice came from the location of accused Gregorio and Michael Tolibas. Gregorio and Michael rushed towards the victim. While appellant and Fernando restrained the hands of Dennis, Gregorio stabbed him in the abdomen with a "*pinute*" (a long sharp-pointed bolo). Appellant and Fernando then released Dennis who fell forward, clutching his abdomen with his hands. When Dennis tried to turn around, Michael hacked him in the back. Thereafter, appellant and Fernando ran away in the direction of Sikatuna St., followed by Gregorio and Michael.^[2]

After witnessing the incident, prosecution witness Juanito Flores became afraid and likewise fled, passing through the interior portion of T. Padilla St..^[3]

Lourdes Noel, the widow of Dennis, testified that her husband, though wounded, managed to stagger home. With the help of her father and sister, she boarded her husband in a taxi and brought him to the Chong Hua Hospital in Cebu City. While she was holding her husband's head on her lap, she asked him who stabbed him. Dennis weakly replied that it was Gregorio and Michael Tolibas. Dennis was brought to the emergency room, but he died after undergoing surgery.^[4]

On June 29, 1983, the four (4) accused were charged with the crime of murder under the following Information:^[5]

"That on or about the 24th day of April, 1983, at about 8:30 o'clock in the evening, in Simoa Sikatuna Street, Cebu city, Philippines, within the jurisdiction of this Honorable Court, the said accused conspiring, confederating and mutually helping one another, taking advantage of their superior strength did, then and there, with treachery and with deliberate intent to take the life of Dennis Noel, willfully, unlawfully, feloniously, suddenly, attack the latter with a sharp bladed instrument and a bolo, first boxing and mauling him, and afterwards stabbing him in the stomach, and finally hacking him with the bolo inflicting upon him the following:

"MULTIPLE PENETRATING WOUNDS"

which injuries are the direct and immediate cause of death of said Dennis Noel.

"CONTRARY TO LAW.

"Cebu City, Philippines, May 24, 1983.

"NO BAIL RECOMMENDED."

Upon arraignment, accused Gregorio and appellant Rodel entered pleas of not guilty. Accused Michael offered to plead guilty to lesser offense of homicide, but the prosecution rejected his offer. Hence, a plea of not guilty was also entered for Michael.^[6]

During trial, the prosecution presented three (3) witnesses: (1) Dr. Samuel Trocio, Sr., the physician who attended to the victim at the emergency room, who testified that the cause of death was "cardiopulmonary arrest, hypovolemic shock, multiple penetrating wounds;"^[7] (2) Juanito Flores, the sole eyewitness to the killing; and (3) Lourdes Noel, the victim's widow.

The defense presented eight (8) witnesses in all, whose testimonies support, either directly or indirectly, the version of the defense that it was only accused Michael who stabbed the victim.

Accused Gregorio testified that at the time of the stabbing incident, he was having a

drinking session with his friend, William Entoma, at the latter's house which is located some 50 meters from the *locus criminis*.^[8] William Entoma corroborated this story.^[9]

Appellant Rodel testified and interposed the defense of denial and alibi. He claimed that he was with his girlfriend, Elizabeth Redoblado, from 6:45 until 12:00 in the evening on the night of the stabbing incident. First, they heard mass at the Sto. Niño Church, then went to the Eden Theater to buy balut, which they brought to a friend at Camp Sergio Osmeña. Afterwards, they had snacks at Snowsheen Restaurant, then at around 10:00 P.M., they visited their friends, Nestor and Myrna Aldemer, and had some drinks with them. At around 12:00 P.M., appellant and his girlfriend went home.^[10]

Elizabeth Redoblado confirmed appellant's story in court.^[11] Defense witnesses Nestor Ardemer, a 34 year-old golf caddie, also testified that appellant and his girlfriend dropped by his house on the night of April 24, 1983. Upon clarificatory question by the court, however, he was not quite sure whether it was on that specific night or the two nights previously.^[12]

Defense witness Jovita Romero further testified that prosecution witness Flores allegedly told her that his motive in testifying against the accused was because he was already implicated in the case.^[13]

The other defense witnesses, namely Jessie Robisano, an 18 year-old second year high school student and bagger at the Gaisano Superstore Warehouse, and Delia Labrador, a 21 year-old high school graduate, testified that on the night of the incident, they were at the Sikatuna Young Men and Women Association (SYMWA) club located at the interior of Sikatuna St. talking with accused Michael. The victim approached the group and asked about the whereabouts of Nestor, the brother of Labrador. When Michael asked the victim why he was looking for Nestor, the victim angrily replied, "*Why are you intervening, Bay?*". A heated argument ensued after which Michael stooped as if to get something, then suddenly stabbed the victim in the stomach and at the back. As a result, Robisano and Labrador scampered away. The two witnesses further testified that they never saw the other three (3) accused within the vicinity during the stabbing incident.^[14]

On October 14, 1987, the trial court rendered a decision finding appellant and Gregorio guilty as charged. The decision disposed as follows:

"WHEREFORE, premises considered, the Court finds accused GREGORIO TOLIBAS and RODEL QUIJON GUILTY beyond reasonable doubt of the crime of Murder qualified by abuse of superior strength, and hereby sentences both accused to suffer the imprisonment of *Reclusion Perpetua* and orders them to indemnify the offended party, Lourdes Noel, the amount of P30,000.00 plus costs.

SO ORDERED."

The trial court failed to make a finding of guilt as to accused Michael Tolibas.

Appellant Rodel Quijon now raises the following issues:^[15]

"I. WHETHER OR NOT ACCUSED RODEL QUIJON MAULED THE DECEASED DENNIS NOEL, WHICH LEAD (SIC) THE COURT A *QUO* TO BELIEVE THAT A CONSPIRACY EXISTED.

"II. WHETHER OR NOT ACCUSED RODEL QUIJON WAS PRESENT WHEN THE STABBING INCIDENT IN QUESTION HAPPENED."

In his Brief, appellant contends that he was merely dragged into the case because he allegedly took part in mauling the victim prior to the stabbing incident. Appellant belies the charges against him, arguing that even the attending physician, Dr. Trocio, testified that there were no contusions on the body of the victim, aside from the stab wounds. Furthermore, appellant contends that the sole eyewitness had a motive in testifying against the accused. Thus, appellant claims that the trial court erred in not giving credence to his alibi which was supported by the testimony of several witnesses for the defense.

The Office of the Solicitor General contends, however, that fistic blows need not necessarily result in any swelling or discoloration in the body of the victim. Further, conspiracy having been established, evidence as to who among the accused rendered the fatal blow is not necessary. More importantly, the positive identification of appellant as one of the assailants should prevail over his alibi, even if supported by the testimonies of his witnesses. The OSG insists that appellant failed to prove that it was physically impossible for him to be present in the *locus criminis* considering that his whereabouts at the time of the stabbing was very near the place of the stabbing incident.

In sum, the present appeal hinges on the assessment of credibility of witnesses. Arrayed against the sole eyewitness for the prosecution are no less than eight (8) defense witnesses, two of whom, namely Robisano and Labador, claim that it was only accused Michael who stabbed the victim, and that the other accused were nowhere in sight. The testimonies of the other defense witnesses further support either directly or indirectly the alibi interposed by appellant Rodel and co-accused Gregorio and that they were not present at the *locus criminis* at the time of the stabbing incident.

Once more, we are guided by the tenet that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that if, considered, might affect the result of the case.^[16] Did the trial court then overlook important factual considerations in rendering the assailed decision? A careful review of the decision leads us to the conclusion that it did not.

Weighing the version of the prosecution as well as of the defense, the trial court found the testimonies of the defense witnesses lacking in candor and consistency. Particularly telling is the circumstance that all of them only surfaced during trial; nary a peep was heard from them during the investigation stage of the case at the police station and prosecutor's office. Further, the alleged motive imputed on the sole eyewitness, that he testified against accused because he was implicated in the case, deserves scant consideration for it is not only hearsay, but even illogical. To the contrary, the trial court found the testimony of the sole eyewitness credible and