

SECOND DIVISION

[G.R. No. 114740, February 15, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO GALAM,^[1] ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision dated November 26, 1993, of the Regional Trial Court^[2] of Puerto Princesa City, Palawan, Branch 47, in Criminal Case No. 8194, convicting accused-appellant of the crime of murder, imposing upon him the penalty of *reclusion perpetua*, and ordering him to pay the heirs of the victim, Roberto Balasanos, the amount of P50,000.00 as compensatory damages, P30,000.00 as moral damages, and P20,000.00 as exemplary damages, and to pay the costs.

The facts of the case on record are as follows:

On June 10, 1989, at around 11:00 o'clock in the evening, while Jose Medina was on his way to the store of a certain Hidalgo in Malis, Brooke's Point, Palawan, he chanced upon appellant Rogelio Galam and another unidentified man, walking in the same direction. Medina noticed that appellant appeared to be carrying a long gun wrapped inside a jacket, placed under his right armpit. Upon reaching the store, Medina bought a cigarette. When he was about to leave, appellant likewise entered the store. Suddenly, five gun shots rang out in the night. Medina saw appellant pointing the gun at the victim, Roberto Balasanos, who was hit on the chest and his sides. The victim leaned weakly on a star-apple tree. Medina was about five (5) meters from the victim, and about ten (10) meters from appellant during the incident. While it was dark on the road, there was a lighted fluorescent lamp, which illuminated the scene of the incident. Shocked at the incident, Medina and the other persons milling around the store scampered away. Appellant merely walked away, and nobody dared to stop him.^[3]

On August 4, 1989, appellant was charged with the crime of "Murder with the use of firearm" under the following Information:^[4]

"That on or about the 10th day of June, 1989, in the evening, near the public market at Barangay Malis, Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a firearm, with evident premeditation and treachery, and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with his firearm one ROBERTO BALASANOS hitting him on the vital parts of his body and inflicting upon him physical injuries, to wit:

Gunshot wounds on

1. Mid-epigastric area;
2. Left upper Quadrant of abdomen;
3. Left anterior axillary line, and
4. Left mid axillary line

through and through, hitting his lungs, anterior spleen and hear that caused hemorrhage and cardiac tamponade which were the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW with the aggravating circumstances of treachery, the accused having employed means which tend directly to insure its execution without risk to the accused, by the use of a firearm, and under the cover of darkness (nighttime).

Puerto Princesa City, Philippines, August 4, 1989."

On December 14, 1989, upon arraignment, appellant entered a plea of not guilty. Pre-trial having been waived,^[5] trial commenced.

The prosecution presented four (4) witnesses, namely (1) Jose Medina, a 20 year-old farmer who witnessed the shooting incident; (2) Patricio Imperial, a 57 year-old farmer who testified that he was present when the victim was shot, but he did not actually see the gunman;^[6] (3) Marciana Balasanos, the widow of the victim, who testified as to the damages she sustained as a result of the death of her husband;^[7] and (4) Dra. Alma Feliciano Rivera, Medical Officer III of the Palawan Provincial Hospital, who interpreted the Partial Autopsy Report issued by Dr. Narciso B. Leoncio, M.D., since the prosecution and defense agreed to dispense with the presentation of Dr. Leoncio. The defense admitted the due execution and genuineness of the Partial Autopsy Report and the Certificate of Death.^[8] Dr. Rivera testified that the cause of death of the victim was the four (4) gunshot wounds which were all fatal and could cause instant death.^[9]

For his part, appellant invoked the defense of denial and alibi. He claimed that on the night of the incident, he was at his house in Samariniana, Brooke's Point, Palawan, which is some eight (8) kilometers from the *locus criminis*. He spent the entire night tending to the sick two (2) year-old son of his friend, Nilda Maranan. His testimony was corroborated by two witnesses, Primitivo Bahande, the faith healer (*arbulario*) who treated the malaria-stricken child for two (2) days, and Nilda Maranan herself, who testified that appellant and Bahande were with her throughout that same night.^[10]

After due trial, on November 26, 1993, the trial court rendered a decision, disposing thus:

"WHEREFORE, premises considered, the prosecution having successfully proven its case, the Court hereby finds the herein accused, ROGELIO GALAM guilty beyond reasonable doubt of the crime of Murder charged against him in the above-captioned case as defined and penalized under Article 248 of the Revised Penal Code without any mitigating circumstance whatsoever, and it hereby sentences him to suffer the

penalty of *RECLUSION PERPETUA*, and to indemnify the heirs of the victim, ROBERTO BALASANOS the sum of FIFTY THOUSAND PESOS (P50,000.00) as compensatory damages; THIRTY THOUSAND PESOS (P30,000.00) as moral damages; and TWENTY THOUSAND PESOS (P20,000.00) as corrective or exemplary damages; and to pay the costs."

Hence, the present appeal. Appellant assigns the following errors:^[11]

A. THE IDENTIFICATION MADE ON APPELLANT GALAM WAS PURELY CONJECTURAL AND BY MERE INFERENCE. JOSE MEDINA'S TESTIMONY IS FATALLY FLAWED ON TWO (2) PIVOTAL POINTS NAMELY:

1. HE DID NOT ACTUALLY AND DIRECTLY SEE APPELLANT GALAM IN THE POSSESSION OF A LONG FIREARM AS HE ONLY PRESUMED THAT WHAT APPELLANT WAS CARRYING WAS A GUN CONCEALED INSIDE A JACKET UNDER APPELLANT'S ARMPIT.

2. HE DID NOT ACTUALLY AND DIRECTLY SEE APPELLANT GALAM SHOOT THE VICTIM AS (i) HIS VISION WAS TURNED AWAY FROM APPELLANT AT THE PRECISE MOMENT THAT THE EXPLOSION OF GUNFIRE OCCURRED; AND (ii) IT WAS THE SOUND OF GUNFIRE WHICH PROMPTED JOSE MEDINA TO TURN IN THE DIRECTION OF THE SOURCE OF THE GUNFIRE, WHICH HE SURMISED CAME FROM APPELLANT SINCE HE SPECULATED THAT APPELLANT WAS BRINGING A FIREARM HIDDEN UNDER A JACKET.

B. IT FAILED TO APPRECIATE THE DEFENSE OF ALIBI BY DEFENDANT.

C. NOT AN IOTA OF EVIDENCE WAS PRESENTED TO DISTINCTLY AND CONCLUSIVELY PROVE THE ELEMENT OF EVIDENT PREMEDITATION AND TREACHERY TO QUALIFY THE CRIME TO MURDER.

Appellant anchors his appeal on the credibility of Jose Medina's testimony and his alleged failure as prosecution witness to sufficiently identify appellant as the gunman in the shooting incident. Appellant argues that in the face of this questionable identification, the trial court erred in not giving due credence to appellant's defense of alibi, which was corroborated by his two witnesses. He further contends that the prosecution failed to present evidence to prove the existence of evident premeditation and treachery.

For the State, the Office of the Solicitor General raises the issues as follows: (1) Was the eyewitness account of Jose Medina sufficient to convict? (2) Was the crime committed murder? The OSG points out that prosecution witness Medina actually saw appellant fire at the victim as the events unfolded before his very eyes from a distance of mere ten (10) meters in a well-lighted place. Hence, his positive identification should prevail over appellant's alibi. The OSG also contends that treachery qualified the killing to murder because of the suddenness of the attack on the victim, who was unarmed and had no chance at all to defend himself.

On the issue of credibility of witnesses, we abide by the well-entrenched rule that the "findings of the trial court as to the credibility of witnesses are accorded great weight, even finality, on appeal, unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the

result of the case. Having had the opportunity to personally observe and analyze their demeanor and manner of testifying, the trial judge is in a better position to pass judgment on their credibility."^[12] In his Brief, appellant emphasizes the following portions of Medina's testimony which he claims demonstrate the prosecution's failure to sufficiently identify him as the assailant:

(1) Medina said in his sworn statement - "*Noon po ay nasalubong ko si Giliong (appellant) at may kasamang isa pero hindi ko makilala masyado, kasi madilim. Mayroong bitbit si Giliong na sa aking palagay po ay baril kasi po itinatago po sa bandang kanan ng kanyang katawan, x x x*"^[13]

(2) Further, on the witness stand, Medina testified that "*I did not really see the gun because it was wrapped in a jacket. xxx It was placed under his right armpit x x x*"^[14]

(3) As to the actual shooting incident, Medina testified that "*when he (Medina) was about to go away, and then (sic) something exploded.*"^[15]

Appellant contends that these excerpts prove two things - that Medina did not actually see appellant carrying a firearm on the night of June 10, 1989, and that he did not see appellant fire at the victim. It is noteworthy, however, that appellant does not allege any inconsistencies in Medina's testimony, but merely hammers on his alleged lack of perception as to the actual shooting incident. We have scrutinized the excerpts cited in the context of Medina's entire testimony, and find that Medina categorically testified on two crucial points - *first*, Medina saw appellant at the *locus criminis* that fateful night, and *second*, Medina actually saw appellant fire at the victim. We have repeatedly held that "a witness' testimony must be considered and calibrated in its entirety, and not by truncated portions or isolated passages thereof."^[16] For better appreciation, Medina's answer in the aforequoted *Sinumpaang Salaysay* is quoted hereunder in full:^[17]

"05.- T - Ano po ang pangyayari na naganap at iyong nasaksihan noon?

- S - Noon po ay nasalubong ko si Guiliong (appellant) at maykasamang isa pero hindi ko makilala masyado, kasi madilim. Mayroong bitbit si Giliong pero na sa aking palagay ay baril, kasi po itinatago po sa bandang kanan ng kanyang katawan, hindi naglipat saglit ay nakarinig po ako ng putok ng baril, nakita kong nanggaling mula kay Giliong ang putok ng baril na mahaba at nakita ko rin po ang nabaril. Nakarinig ako ng limang putok ng baril at kitang kita ko na patumba ang tao na tinamaan ng bala, kasi mayroong liwanag na nanggaling mula sa sayawan at sa tindahan nina DUK, kaya saksi ako sa pagbaril na iyon." (Italics supplied)^[18]

From the transcripts of stenographic notes covering witness Medina's testimony^[19] emerges a clear picture of the shooting incident, as follows:

"PROSECUTOR DELOVINO

Q: That night, where did you see Giliong (appellant)?

A: On the road, Ma'am.

COURT:

Q: What happened?