

## THIRD DIVISION

[ G.R. No. 137276, July 13, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCOS MUCAM Y BANDAYANON AND ALDRIN TINOY Y  
BANTAYAN, ACCUSED MARCOS MUCAM Y BANDAYANON,  
APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

As a rule, the trial court's assessment of the credibility of witnesses and their testimonies is binding on appellate courts, absent any fact or circumstance of weight and substance that may have been overlooked, misapprehended or misapplied. In this case, the court *a quo* committed serious lapses which warrant the acquittal of the appellant.

Statement of the Case

Marcos Mucam y Bandayanon appeals the September 18, 1998 Decision<sup>[1]</sup> of the Regional Trial Court of Davao City (Branch 15) in Criminal Case No. 35,357-95, in which he was convicted of robbery with homicide and sentenced to *reclusion perpetua*.

In an Amended<sup>[2]</sup> Information dated September 14, 1995, Prosecutor 1 Romeo C. Albarracin charged appellant and Aldrin Tinoy y Bantayan with robbery with homicide allegedly committed as follows:<sup>[3]</sup>

"That on or about April 8, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with [a] cal. 38 revolver, with intent to gain, willfully, unlawfully and feloniously took, stole and carried away the amount of P105,000.00 belonging to Elmo Fernandez and after divesting the said amount on the occasion of the robbery, conspiring, confederating together and helping one another, with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and shot said Elmo Fernandez thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter."

During the arraignment on October 4, 1995, the Amended Information was read and translated into the Cebuano-Visayan dialect, with which the two accused were conversant. Assisted by Counsel Rufino Ferraris Jr., both pleaded not guilty.<sup>[4]</sup> Trial proceeded in due course. Thereafter, the court *a quo* rendered its Decision convicting herein appellant and acquitting Aldrin Tinoy. The dispositive portion of the Decision reads as follows:

"WHEREFORE, judgment is rendered as follows:

1) Aldrin Tinoy is acquitted since his guilt has not been proven [beyond] reasonable doubt. The City Jail Warden shall release Aldrin Tinoy unless [the latter] is facing other cases.

2) Marcos Mucam is hereby sentenced to reclusion perpetua; shall indemnify Vizmindia Fernandez, the widow, [o]ne [h]undred [t]housand [p]esos for the death of Elmo Fernandez and [e]ighteen [t]housand [p]esos for the burial and funeral expenses.

3) The instruments used in the commission of the crime are hereby forfeited in favor of the state.

4) The accused who had undergone preventive imprisonment shall be credited in the service of his sentence if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rule imposed upon a convicted prisoner under Article 29 of the Revised Penal Code as amended.

SO ORDERED."<sup>[5]</sup>

Hence, this appeal interposed by Marcos Mucam.<sup>[6]</sup>

### The Facts

#### Version of the Prosecution

In its Brief,<sup>[7]</sup> the Office of the Solicitor General presents the following narration of facts:<sup>[8]</sup>

"On August 8, 1995, Elmo Fernandez boarded a tricycle in Buhangin bound for his workplace in Cabantuan,<sup>[9]</sup> Davao City.

"Earlier that morning, Fernandez, a sub-contractor with Villarosa Housing, met with Mrs. Imelda Villarosa. Mrs. Villarosa gave Fernandez P63,000.00 as wages for the workers of the Villarosa's housing project. Fernandez kept the money in his bag.

"The tricycle boarded by Fernandez was the type wherein the motorcycle is installed in the middle of the carriage instead of its side. It could seat ten passengers and among those was Abad Gille who sat beside the driver.

"A few minutes after the tricycle left Buhangin, one of the passengers seated at the rear announced a hold-up and ordered the driver to pull over. A commotion stirred as three men, among whom was accused-appellant Marcos Mucam y Bandayanon, tried to grab the bag from Fernandez. Fernandez refused to give the bag, pleading that it contain[ed] the wages of the workers. The plea of Fernandez, however, fell on deaf ears as he was shot in the head while the three men grabbed

the bag and ran.

"Gille witnessed the robbery and killing by viewing them from the "front mirror of the tricycle." Elmo Fernandez died due to severe hemorrhage secondary to [the] gunshot wound. Three metallic fragments were recovered from his brain."

### Version of the Defense

On the other hand, appellant presents in his Brief<sup>[10]</sup> the following version of the facts:

"The defense presented Genes Cahilog who testified that accused Tinoy was his housemate and that on April 8, 1995 at around 7:00-8:00 o'clock a.m., accused Tinoy was [in] their house, cooking food. He also testified that accused Tinoy stayed at home while he left at 9:00 o'clock a.m.

"The second witness presented was the accused-appellant himself, Marcos Mucam. On April 8, 1995, he was at the store of Lydia Pangandaman from 6:30 o'clock in the morning until 10:00 o'clock a.m. having drinks with Lydia and her husband. He also denied having any firearm. He also alleged that from the time he surrendered, he was continuously mauled by the police.

"Lydia Panga[n]daman corroborated the accused's alibi that he was at her store from 6:30 a.m. to 10:00 a.m. of April 8, 1995, having some drinks with her husband. x x x"<sup>[11]</sup>

### Ruling of the Trial Court

In convicting appellant and acquitting Aldrin Tinoy, the trial court ratiocinated as follows:<sup>[12]</sup>

"x x x After hearing the witnesses and analyzing the exhibits and after considering the arguments of counsel, the court is satisfied:

- 1) That on April 8, 1995 at about 7:00 A.M. Elmo Fernandez boarded a tricycle in Buhangin bound for Cabantian, carrying a bag containing P63,000 pesos which he got earlier that morning from Mrs. Imelda Villarosa
- 2) That the P63,000 [was] the salar[y] of the laborers in a housing project in Cabantian
- 3) That the victim sat on one of the seats behind the driver
- 4) That Abad Gille also rode the tricycle and sat [o]n the front seat beside the driver

- 5) That while the tricycle was running, one of the passengers seated at the back told the driver to stop the tricycle, saying "This is a holdup!"
- 6) That Abad Gille managed to look at the scene at the back of the tricycle when the holdup was announced and clearly saw the incident
- 7) That there was a commotion as the three grabbed the bag from the victim who refused to give it saying it [was] the salary of the laborers and there was [a] struggle for the bag
- 8) That the victim was shot in the head and the three got the bag and ran away
- 9) That Elmo Fernandez was brought to the hospital but died on arrival as evidenced by a necropsy report marked[,] leaving a grieving widow and 5 children
- 10) That accused Mucam on April 9, 1995 invited Alvin Lumosad to drink saying he got a lot of money from a holdup
- 11) That Alvin Lumosad met a [p]oliceman and by chance, the Buhangin robbery killing was mentioned and Alvin Lumosad said accused Mucam mentioned the holdup and had lots of money
- 12) That the Sta. Ana Police Team went to the house of accused Mucam but was told Mucam left for his hometown Caraga
- 13) That a [p]olice team with the help of the Caraga Police caught accused Mucam, Diuyan and the brother of Mucam whom they brought to Davao City
- 14) That the [p]olice went to a boarding [house] in Magallanes Street and caught Aldrin Tinoy who said he [was] not Jabillo Tinoy
- 15) That despite his protest, Aldrin Tinoy was arrested and charged with this crime

1[6]) That Aldrin Tinoy is not the same person identified as Jabillo alias Rasboy. The defense of Mucam is based on denial and an alibi that he was drinking in Lydia Pangandaman's store on April 8, 1995 from 7:00 A.M. up to 10:00 A.M. However, eyewitness Abad Gille positively identified accused Mucam and Aldrin Tinoy as [among] the robbers.

"Denial is a weak defense when the prosecution's evidence is strong. Positive identification of the accused by prosecution witnesses as to his participation in the crime cannot be overcome by his denial. P v. Chaves 117 SCRA 221, P v. Mancio G.R. 93035-36 Jan. 24, 1992

"Alibi is the weakest of all defenses x x x [and] should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. P v. Sambangan 125 SCRA 726, P v. Regala 127 SCRA 287

"The accused did not impute any malice [to] the policeman who testified against him[;] thus [the] `Police Officers' testimony as to the narration of [the] commission of [a] crime [was] credible. P v. Ganayon 121 SCRA 642. `Lack of motive to make fake accusations strengthens credibility of witnesses. P v. Salcedo 122 SCRA 54.'"

### The Issues

Appellant submits for the consideration of this Court the following alleged errors:<sup>[13]</sup>

"I

The Court *a quo* erred in convicting the accused on the basis of the weakness of the defense evidence.

II

The lower court's decision [was] patently erroneous for it failed to explain the basis for its findings.

III

The court a quo erred in convicting the accused notwithstanding its failure to prove his guilt beyond reasonable doubt."

In the main, the Court will determine the sufficiency of the prosecution evidence.

### The Court's Ruling

The appeal is meritorious.

### Main Issue: