

FIRST DIVISION

[G.R. No. 103547, July 20, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO MALLARI Y SANCHEZ, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Romeo Mallari y Sanchez, also known as "*Romy Toyo*" or "*Meo*," was charged with murder in an information that reads as follows:

"That on or about December 9, 1990, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ALFREDO MENDOZA Y ESTRELLA, by then and there stabbing the latter with a bladed weapon on the chest thereby inflicting the latter mortal wounds which were the direct and immediate cause of his death thereafter."^[1]

Upon arraignment, accused-appellant pleaded "not guilty." Whereupon, trial on the merits ensued. The prosecution presented Wilfredo Eyas, an alleged eyewitness; Pfc. Norberto Obrero of the Investigation Division and Dr. Marcial Ceñido, Medico Legal Officer, both of the Western Police District. The defense, on the other hand, presented accused-appellant himself and his father Pedro Mallari.

The facts as found by the trial court are as follows:

At 8:30 in the evening of December 9, 1990, Alfredo Mendoza, Wilfredo Eyas, and Ricardo Borja were having a drinking spree at the corner of Claro M. Recto and Elcano Streets, Binondo, Manila.^[2] Eyas sat in front of Mendoza about an armslength away while Borja sat on his right.^[3] About four (4) meters away was the pushcart owned by a certain *Aling Vicky* where they bought beer.^[4] Mendoza, Eyas and Borja were drinking for more or less thirty (30) minutes and consumed six (6) bottles of beer.^[5] While Mendoza was pouring beer into his glass, accused-appellant suddenly appeared from behind Mendoza and stabbed him on the chest once with a pointed weapon.^[6] After stabbing Mendoza, accused-appellant casually walked away and then fled from the scene.

Eyas ran after accused-appellant but when the latter saw Eyas running after him, he turned around and ran after Eyas instead. Afraid, Eyas retraced his steps and returned to where he left his wounded comrade.^[7]

Mendoza, by then, had already been brought to Mary Johnston Hospital where he was pronounced dead on arrival. The guard on duty called up the homicide section

of the Western Police District and reported the stabbing incident. Responding to the call, Pfc. Norberto Obrero and Pat. Henry Nuñez went to the hospital where they saw Bartolome Castro and Joey Angeles who claimed to have been likewise stabbed by "*Romy Toyo*" on C.M. Recto and Elcano Streets, Binondo, Manila. They likewise learned that a certain Alejandro Quintana was also stabbed dead by "*Romy Toyo*" on the same street corner.

At around 9:30 in the evening of December 9, 1990, the police investigators went to the crime scene where they were informed by a certain *Aling Vicky* that Wilfredo Eyas was one of the drinking companions of the victim. They sought Eyas but the latter only told them his name and address and did not give any statement regarding the incident. Eyas knew accused-appellant was then still at large and a notorious killer.

Medico-Legal Officer Dr. Marcial Ceñido autopsied the cadaver of Mendoza. According to him, Mendoza died of a "penetrating stab wound right anterior thorax appearing at the right ventricle of the heart."^[8] In his opinion, the relative position of the wound would be more in line with the theory that the assailant could have been standing when he attacked his seated victim.^[9]

Based on the information gathered, Pfc. Obrero prepared the "Advance Information" naming "*Romy Toyo*" or "*Meo*" as the suspect.

On January 7, 1991, operatives of the Patrol Division of the Western Police District apprehended accused-appellant in connection with a robbery with homicide case.^[10] Apprised of the apprehension, Pfc. Obrero asked Eyas and Borja to identify him. Eyas pointed to accused-appellant in a police line-up of seven persons as the killer of Alfredo Mendoza. On the basis of the identification, accused-appellant was formally charged for the killing of Alfredo Mendoza.

Accused-appellant denied knowing Alfredo Mendoza or killing him. He confirmed being called "*Romy Toyo*" by his family and friends but denied being called "*Meong*."^[11] He claimed he was resting in his house at J.P. Rizal St., Makati on the day the stabbing occurred.^[12]

Accused-appellant also testified that he was invited to the Makati Police Station where he was informed of the charge of murder against him.^[13] He admitted being made to join a police line-up twice in the Western Police District Station but denied that Eyas pointed or identified him. He further alleged that he did not even see Eyas during the police line-up.^[14] He claimed that the police officers maltreated him while in detention and forced him to admit the charges filed against him.^[15]

In addition, accused-appellant alleged that Pfc. Obrero demanded money supposedly for the dropping of charges against him. Since the money given by his father and sister was not enough, only three (3) out of five (5) charges against him were dropped.^[16]

Accused-appellant claimed he only met Ricardo Borja, who was then also detained at the City Jail, for the first time when he appeared before the trial court in connection with his case.^[17]

Pedro Mallari, father of accused-appellant, testified that he accompanied his son to the police station and pleaded with Pfc. Obrero to help his son. However, Pfc. Obrero told him the case was already out of his hands. He admitted offering money to the policeman for the dropping of the cases against his son.^[18]

The trial court found accused-appellant guilty beyond reasonable doubt of murder and sentenced him to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of Alfredo Mendoza in the amount of P50,000.00 and to pay the costs.^[19]

The accused-appellant raises the following assignment of errors:

I.

"THE FAILURE TO PRODUCE BORJA TO TESTIFY IS TANTAMOUNT TO A SUPPRESSION OF EVIDENCE UNDER RULE 131 WHILE BEING AT THE SAME TIME A GROSS VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO COMPULSORY PROCESS.

II

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDIT TO WITNESS EYA'S TESTIMONY.

A] WITNESS EYA'S ACCOUNT OF THE STABBING DOES NOT JIBE WITH THE MEDICAL FINDINGS OF THE MEDICO-LEGAL OFFICER AND IT FURTHERMORE DEFIES HUMAN EXPERIENCE.

B] TREACHERY NECESSARILY WAS NOT PROVEN.

C] THERE WAS FAILURE TO PROVE EYA'S PRESENCE AT THE TIME OF THE INCIDENT.

D] THE LACK OF PROOF OF ILL-MOTIVE ON EYAS'S PART IS NOT REQUIRED IN THIS CASE CONTRARY TO THE TRIAL COURT'S DECISION.

E] EYA'S TESTIMONY IS INCREDIBLE, AND FRAUGHT WITH INCONSISTENCIES.

III

THE FINDING OF GUILT BEYOND REASONABLE DOUBT IS PERFORCE EQUALLY ERRONEOUS."^[20]

This Court is not persuaded. Consequently, accused-appellant's conviction stands.

First: Contrary to the assertion of the defense, the prosecution is not guilty of suppression of evidence. The disputable presumption that evidence willfully suppressed would be adverse if produced is not even applicable in the instant case. It is extant from the records that the prosecution has satisfactorily established its case against accused-appellant through the sole testimony of Wilfredo Eyas. Hence, there is no more necessity to present Borja as his testimony would only be

corroborative, if not cumulative.

In *People v. Pagal*^[21] citing *People v. de Jesus*,^[22] this Court has ruled that "the adverse presumption arising from suppression of evidence is not applicable when the evidence is merely corroborative or cumulative and/or likewise available to the defense." In the instant case, Borja was not a material witness but merely a corroborative one. If at all, Borja would only confirm the matters already testified to by Eyas. It should be noted that Borja was a drinking companion of Mendoza and Eyas and in all likelihood, would only testify on what he saw during the incident which would not have been substantially or significantly different from what Eyas had testified on. In any event, it was within the prerogative of the prosecution whom to present as witness.

More importantly, Borja was at the disposal of both the prosecution and the defense. Both parties subpoenaed Borja but the latter failed to appear at both times. The defense did not proffer proof that the prosecution prevented Borja from testifying. There is therefore no basis for it to conclude that the prosecution is guilty of suppression of evidence.

The defense was not short of alternative remedies for their failure to compel Borja to appear before the court. They could have asked that Borja be cited for contempt, or if they were really desperate to disprove the eyewitness account of Eyas, they could have summoned other witnesses aside from Borja because, to borrow the words of the defense, "there are of course others who have witnessed the crime."

^[23] In *People v. Jumanoy*,^[24] this Court held:

"The prosecution's failure to present the other witnesses listed in the information did not constitute, contrary to the contention of the accused, suppression of evidence. The prosecution has the exclusive prerogative to determine the witnesses to be presented for the prosecution. If the prosecution has several witnesses, as in the instant case, the prosecution need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. This Court has ruled that the non-presentation of corroborative witnesses would not constitute suppression of evidence and would not be fatal to the prosecution's case."

Regardless, the well-entrenched rule is that the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner. It has been held that witnesses are to be weighed, not numbered; hence, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness. For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greater number and conviction can still be had on the basis of the credible and positive testimony of a single witness. Corroborative evidence is deemed necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.^[25] The lower court found nothing to indicate that Eyas falsified the truth or that his observation had been inaccurate.