

FIRST DIVISION

[G.R. No. 129882, September 14, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO TAN ALIAS "DING", ACCUSED-APPELLANT.**

D E C I S I O N

YNARES_SANTIAGO, J.:

Accused-appellant Fernando Tan *alias* "Ding" and the victim Rey Buzon were childhood friends and neighbors at Don Manuel Street, La Loma, Quezon City. However, because of a certain woman named Zenaida Hermosisima, their long friendship ended on a sad and tragic note.

Zenaida Hermosisima, then the girlfriend of Fernando Tan, eloped with Rey Buzon. Zenaida and Rey eventually settled in the United States leaving behind Fernando with a grieving heart. Years passed and life went on for the trio. In time, Fernando himself got married and later became a widower.

Sixteen years later, in 1988, Rey returned to the Philippines. On the fateful day of April 25, 1988, he visited his relatives and friends at Don Manuel Street, La Loma, Quezon City. He had lunch with them and at about 1:00 o'clock in the afternoon, he prepared to leave to meet his accountant. Instead of meeting his accountant, he met his death.

Rey stepped out of the gate of their house accompanied by his half-sister Alicia Paras, Marcial Gavino, Wilit Marcaver and Francisco dela Rosa. Rey and Francisco seated themselves at the backseat of an owner-type jeep while Wilit Marcaver occupied the driver's seat with Alicia Paras beside him. Marcial Gavino had yet to board, when Alicia saw appellant Fernando Tan approaching them. Alicia greeted him but instead of answering, Fernando pulled out a gun and pointed it at Rey saying, "*Tarantado! Matigas talaga ang ulo mo, babarilin kita!*" After uttering those words, Fernando shot Rey hitting him. Rey struggled to get out of the jeep and ran towards their house. Alicia followed but Fernando caught up with them. Alicia's attempt to shield Rey so enraged Fernando that he pointed a gun at Alicia's nose and shouted: "*Putang ina mo, umalis ka diyan.*" Scared, Alicia ran outside the gate. Fernando and Rey, meanwhile, wrestled with each other. At this juncture, Alicia heard his other brother, Castor Buzon, who was upstairs in their house, shout: "*Huwag, Ding.*"

When Rey was able to escape from the clutches of Fernando, he ran towards Halcon Street with Fernando closing in and at the same time shooting him. When Fernando caught up with Rey in Halcon Street, the latter, while in a kneeling position, implored: "*What have I done to you, why are you doing this to me?*" But Fernando remained deaf to his pleas. Instead, he hit Rey with his gun on the face and shot him. Rey died instantly.

Anita Lacanlalay, whose house was next to the Buzon's, was then resting in her house when she saw the victim, accompanied by Alicia Paras, Marcial Gavino, Francisco dela Rosa and Wilit Marcaver step out of the gate and board the owner-type jeep parked in front of their house. Then, Lacanlalay saw Fernando Tan walking towards them and a short while later, he saw Fernando shoot Rey who was already seated inside the jeep. The victim then jumped out of the jeep and ran inside their house with Fernando in pursuit. After a while, Lacanlalay again saw the victim running towards the direction of Halcon Street with Fernando at his heels shooting him.

Cpl. Fortaleza, tasked to investigate the killing, interviewed John Buzon, Marcial Gavino, Francisco dela Rosa and Alicia Paras, who were one in pointing to the accused as the author of the crime. After interviewing Buzon, Gavino, dela Rosa and Paras, Fortaleza proceeded to Halcon Street and interviewed three (3) other persons who identified themselves only as neighbors of the victim. They informed Fortaleza that a certain "*Willy Toma*" shot the victim. However, when he invited them to go with him to the police station, they refused and immediately left.

On December 27, 1988, an Information was filed charging Fernando Tan alias Ding with murder, to wit:

"That on or about the 25th day of April, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill and without any justifiable cause, qualified with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one REY BUZON y MAÑALAC, by then and there shooting him with two (2) short handguns of unknown caliber hitting him on the different parts of his body thereby inflicting upon the said Rey Buzon serious and mortal injuries which were the direct and immediate cause of his death to the damage and prejudice of the HEIRS of the said Rey M. Buzon in such amount as may be awarded to them under the provisions of the Civil Code.^[1]

At the arraignment, accused-appellant pleaded "*not guilty*" to the charge. Trial on the merits ensued. The prosecution presented Dr. Renato Bautista, the medico-legal officer; Mrs. Alicia G. Paras, half-sister of the victim; Mrs. Anita Lacanlalay, a relative by affinity of the victim; Reymualdo Buzon, son of the deceased; and Cpl. Rodrigo Fortaleza, the police investigator in-charge of the case.

On the other hand, the defense presented Cecilio To, Nenita Buenaventura, Marianito Gloria, who all claimed to be eyewitnesses; Aida Carrera, an employee of the Quezon City Registrar's Office; Dr. Jude Gonzales; Beatrice Tolentino; and Cpl. Rodrigo Fortaleza.

Fernando Tan denied commission of the crime. In his testimony, he narrated a totally different story. He claimed that in the evening of April 24, 1988, he witnessed an altercation and a fistfight between Rey Buzon and a certain Willie Fernandez *alias* "*Willie Toma*." Fernandez allegedly urinated in front of the gate of Buzon which irked the latter.

The next day, April 25, 1988 at about 1:00 o'clock in the afternoon, Willie Fernandez alias "*Willie Toma*" allegedly approached Buzon who was then seated inside an owner-type jeep parked in front of Buzon's house. Without any provocation coming from Buzon, Fernandez allegedly shot the former. Buzon jumped out of the vehicle and went inside the gate of their house with "*Willie Toma*" in hot pursuit. From their house, Buzon ran towards Halcon Street while "*Willie Toma*" continued chasing and shooting him. While the two (2) were already on Halcon Street, Fernando Tan allegedly tried to intervene and pacify the protagonists shouting "*Tama na, tama na!*". Nonetheless, he was not able to reach Buzon and "*Willie Toma*" as he was prevented by a certain Nene Buenaventura.

According to Fernando Tan, Willie Fernandez alias "*Willie Toma*" died sometime in September 1991.

After the trial, accused Fernando Tan was found guilty of murder and was sentenced to suffer the penalty of *reclusion perpetua*.

Accused-appellant is now before this Court assigning the following as errors:

First: He alleged that "the lower court erred in taking as gospel truth the testimonies of the alleged eyewitness Alicia Paras x x x inspite of the fact that her testimonies were heard by judges other than the one who penned the assailed amended decision."

This Court is not persuaded. While the rule that factual findings of the court below are generally not disturbed on appeal because the trial judge had the best opportunity to observe them and the manner by which they testify is concededly not applicable in the instant case considering that the judge who penned the decision was not the one who heard all the witnesses, nevertheless, after a careful review of the records of the case, this Court finds no reason to disturb the conclusions reached by the trial judge.

Alicia Paras categorically identified accused-appellant as the lone perpetrator of the crime. No earmark of inconsistency can be found in her narration. Granting that Paras was the half-sister of Buzon, this does not automatically mean that her testimony could not be relied upon. Mere relationship with any of the parties does not disqualify one from being a witness. Neither could one be branded as a biased witness because of one's relationship with a party to a case. In the instant case, the defense attacked the credibility of Paras because she is related to the victim. Paras was candid and straightforward in her testimony, categorical in her assertions. Being a relative of the victim, this Court is convinced that Paras only wanted to obtain justice for her fallen brother. In her quest for truth, this Court believes that she only wanted the real culprit and nobody else to suffer the consequences of his wrongful acts.

The defense belabored to point out an alleged inconsistency in the testimony of Paras particularly with regard to the address of the deceased. However, this matter is immaterial and irrelevant. It is so inconsequential that it failed to cast even a hint of doubt on the credibility of prosecution eyewitness Alicia Paras. All told, the defense utterly failed to dent the credibility of Paras.

Second: The defense faults the lower court for "not considering as fatal to the