

FIRST DIVISION

[G.R. No. 119971, March 26, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO PALLARCO, ACCUSED-APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

As a defense, alibi is inherently unreliable and easy to fabricate. It cannot prevail over the positive identification of the appellant by a credible eyewitness who has no ill motive to testify falsely.

The Case

The Court applies this principle in denying the appeal of Orlando Pallarco from the Decision^[1] of the Regional Trial Court, Branch 15 of Ozamis City,^[2] convicting him of murder and sentencing him to *reclusion perpetua*.

In an Information dated September 20, 1993, First Assistant Provincial Prosecutor Liben Go Medina of Ozamis City charged appellant as follows:

“That on or about the 30th day of July, 1993, at about 8:30 o’clock in the evening, more or less, in barangay Pan-ay, municipality of Clarin, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a handgun revolver, with evident premeditation, taking advantage of the darkness of the night, did then and there, willfully, unlawfully, treacherously and suddenly shot [sic] the victim JESUS JERUSALEM, thereby inflicting upon the latter, gunshot wound on the head, which caused the instantaneous death of the said victim.”^[3]

Assisted by his counsel *de officio*, Graciano R. Bañosia of the Public Attorney’s Office (PAO), appellant entered a plea of not guilty.^[4] After trial in due course, the lower court rendered the assailed Decision, the decretal portion of which reads:

“WHEREFORE, finding accused Orlando Pallarco guilty beyond reasonable doubt of murder qualified by treachery, without other modifying circumstances, this Court sentences him to *reclusion perpetua* and orders him to pay the heirs of Jesus Jerusalem death indemnity of P50,000.00. With costs against accused.”^[5]

Hence, this appeal.^[6]

The Facts *Version of the Prosecution*

The prosecution presented as witnesses (1) Apolonio Enomar Jr.^[7] and (2) Diogenes^[8] Salazar,^[9] eyewitnesses who were with the victim at the time of the assault; and (3) Mrs. Evangelista Jerusalem,^[10] the widow.^[11] The antecedent facts,

as summarized by the trial court and adopted by the solicitor general in the Appellee's Brief,^[12] are reproduced hereunder:

"2. Apolonio Enomar, Jr. - eyewitness, declared that on July 30, 1993 at 8:00 p.m., he was at home in Pan-ay, Clarin, Mis. Occ. with Diogenes Salazar and the victim Jesus Jerusalem, drinking beer in the kitchen; suddenly accused appeared at the door and shot Jerusalem three times on the head with a revolver, hitting him at the nape; victim had his back to accused; victim died; accused has been [his] neighbor for 10 years.

3. Diogenes Salazar, eyewitness, declared that on July 30, 1993, he was at the house of Apolonio Enomar Jr. drinking beer with victim Jesus Jerusalem in the kitchen; the victim was shot by the accused who has been his friend and neighbor for 20 years; he saw accused shoot the victim - he was just one meter away; accused just came in through the kitchen door and shot the victim on the head with a short firearm; he fired three shots and ran away; there was a gas lamp in the kitchen; on cross, he admitted that he executed an affidavit to the effect that he did not know the assailant; that he complained to Atty. Alegria Cariño that his affidavit was not correct[,] so upon advice, he executed another affidavit before Pros. Daomilas in Ozamis City to the effect that he knows the assailant.

[4]. Evangelista Jerusalem, widow of the victim, declared that Apolonio Enomar Jr. told her at the wake of her husband that he and Diogenes Salazar witnessed the shooting of her husband so she went to Diogenes['] house to ask him to testify; accused and her husband Jesus Jerusalem had an earlier altercation at the weekly barangay market caused by accused's failure to pay her husband's winnings in a cockfight."^[13]

Version of the Defense

Setting up alibi and denial, the defense presented 1) Vicente Siao,^[14] barangay captain of Pan-ay where the killing took place; (2) Jose Roque,^[15] who was allegedly with the appellant in a drinking spree at the time of the incident; and (3) appellant himself.^[16]

Appellant presented in his Brief^[17] his own version of the facts, as follows:

"x x x [I]n the afternoon of July 30, 1993, accused-appellant was selling his tomato harvest in the market place of Pan-ay, Clarin, Misamis Occidental, when he met Jose Roque, an acquaintance. Roque invited Pallarco to his house because he will butcher a dog. At about six in the evening, Jose Roque, Orlando Pallarco and one Meliton Batlag proceeded to the former's house. They prepared and cooked the dog's meat. Thereafter, they drank tuba and ate dog's meat. At about 8:30 o'clock in the evening, they heard three (3) gun shot[s] coming from the direction of the market place. A commotion followed shortly, prompting Pallarco and Batlag to verify. The duo went to the market place and notice[d] people milling around Apolonio Enomar's house. Curious, Pallarco entered Enomar's kitchen and saw Jesus Jerusalem dead on the floor. Some policemen were present at the crime scene. Policeman Calinga and Taylaran requested the appellant to turn the cadaver upside and to look for any identification or firearm. Thereafter, Batlag and Pallarco returned to Roque's house to resume their drinking session. They went home at ten in the evening. Accused-appellant denied killing Jesus Jerusalem. He never quarreled

with Jerusalem but he once had an altercation with alleged eyewitness Apolonio Enomar, Jr. when he refused to give the latter a bottle of Tanduay rum.

“In the early morning after the shooting incident, Barangay Captain Vicente Siao of Pan-ay, Clarin, Misamis Occidental, went to the market place after he learned that somebody was killed there the night before. He proceeded to Enomar’s house, the scene of the incident. He saw Enomar and Salazar and inquired from them who killed Jesus Jerusalem. The duo told the barangay captain that they failed to identify the gun man because it was very dark. Siao observed that Enomar’s kitchen was lighted with a gas lamp and there was no other source of illumination outside the kitchen. (TSN, pp. 2-8, August 26, 1994; pp. 2-14, September 21, 1994; pp. 2-18, October 19, 1994).”^[18]

The Trial Court’s Ruling

While, on the one hand, the trial court belittled the testimony of Witness Diogenes Salazar as “not reliable [because] he flip-flopped from saying he identified the assailant to declaring he did not,”^[19] on the other hand, it gave credence to Apolonio Enomar Jr. by declaring:

“Witness Enomar spoke with sincerity and conviction and positively identified accused. There appeared no reason why he would falsely testify against him. [That] he had told defense witness Siao the morning after the shooting that he was not able to identify the assailant because it was dark is understandable. This Court takes judicial notice of the reluctance of witnesses to bandy about their knowledge of the identity of assailants especially when these assailants are still on the loose.”^[20]

Assignment of Error

Appellant assails the trial court on this ground:

“The Court *a quo* gravely erred in finding that the guilt of the accused-appellant for the crime charged has been established beyond reasonable doubt.”^[21]

In the main, appellant disputes the trial court’s assessment of the credibility of the witnesses and the sufficiency of the evidence of his guilt.

This Court’s Ruling

The appeal has no merit.

Credibility of Prosecution Witness

Appellant argues that the testimony of Prosecution Eyewitness Apolonio Enomar Jr. is not worthy of credence for the following reasons:

1. He failed to immediately report the identity of the assailant to the police and the widow.
2. Prosecution Witness Diogenes Salazar contradicted Enomar’s allegation that he recognized the attacker.
3. Corroborating Salazar, Defense Witness Siao alleged that both Enomar Jr. and Salazar admitted to him that they failed to recognize the gunman.
4. Enomar harbors an ill motive against the appellant.

We do not agree. Basic is the rule that appellate courts will not disturb the trial court's assessment of the credibility of witnesses, in the absence of proof that some fact or circumstance of substance has been overlooked, or its significance misinterpreted which, if properly appreciated, would affect the disposition of the case. Having heard the witnesses and observed their deportment on the stand, the trial judge is in a better position to resolve such question. [22] We have examined the records and found no reason to depart from this well-settled rule.

Eyewitness Enomar's testimony is straightforward, credible and candid. He narrated the incident thus:

“Q Mr. Apolonio Enomar, do you remember where were you on July 30, 1993 at around 8:30 o'clock in the evening?

A Yes, sir.

Q Where were you?

A In my house.

x x x x x x x x x

Q Now, who were your companions in your house at that time?

A Deojenes Salazar and Jesus Jerusalem.

Q Now, what were you doing in your house at that time?

A We were drinking.

x x x x x x x x x

Q Now, [was there] any significant thing that happened that evening?

A Yes, sir.

Q What was that?

A Jesus Jerusalem was shot.

Q [W]here is this Jesus Jerusalem now?

A Dead.

Q Now, who shoot [sic] Jesus Jerusalem?

A O[r]lando Pallar[c]o

Q Why do you say that it was Orlando Pallarco who shoot [sic] Jesus Jerusalem?

A Because I saw him.

Q How far were you from Orlando Pallarco when he shoot [sic] Jesus Jerusalem?

A One fathom sir.

Q Now, you mentioned that it was Olardo Pallar[c]o who shot Jesus Jerusalem, do you know Orlando Pallarco?

A Yes, sir.

Q Why do you know him?

A We are neighbors.

Q How long have you known Orlando Pallarco?

A Longtime [sic] ago sir.

Q Approximately how many years?

A Around ten years already.

x x x x x x x x x x

Q [W]hen the three of you while [sic] drinking, Orlando Pallarco suddenly appeared at the door of the kitchen.

A Yes, sir.

Q When he appeared, what did you do?

A He shot Jesus Pallarco.

Q What did he use to shoot Jesus Jerusalem?

A Revolver.

Q Is that a long firearm or short firearm?

[A] Short arm.

x x x x x x x x x x

Q How many shots did he make in shooting Jesus Jerusalem?

A Three times sir.

Q Where was Jesus Jerusalem hit?

A In his head.

x x x x x x x x x x

COURT What was the possession [sic] of the victim when he was shot by the accused?

A He was standing Your Honor.

Q He was facing the accused?

A His back.

Q What part of the head was hit?

A In the nape.

x x x x x x x x x x