

SECOND DIVISION

[G.R. No. 129556, November 11, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY GADO, ACCUSED-APPELLANT.

D E C I S I O N

MELO, J.:

Accused-appellant Rey Gado seeks reversal of the judgment of conviction rendered by Branch 276 of the Regional Trial Court of the National Capital Judicial Region stationed in Muntinlupa City.

The Information dated July 14, 1992 charging accused-appellant and his co-accused Emma Gallos with Murder pertinently alleged:

That on or about the 30th day of January, 1992, in the Municipality of Muntinlupa, Metro Manila, Philippines, and within and jurisdiction of this Honorable Court , the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, with intent to kill, with treachery, while armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously stab Melencio M. Manalang, Jr. in his abdomen as a result of which said victim sustained a serious body injury which caused his death, to the damage and prejudice of his heirs in such amount as may be proven at the trial.

(p. 1, Record.)

During trial, the prosecution adduced the inculpatory facts through Fernando Reyes, Melencio Manalang, Sr. (the victim's father), and Dr. Alberto M. Reyes, then Acting Chief of the NBI Medico -Legal Division, which may be summarized as follows:

On the evening of January 30, 1992, the victim and some of his friends were having a drinking session at the house of Juanito Vicente. Shortly thereafter, the victim decided to leave and accused-appellant Rey Gado and Juanito Vicente decided to bring him home. With them were a certain Emma and her brother whose name the victim failed to mention. On their way, and while they were along Fleur De Liz Street, the victim was held by his companions and he was stabbed in the abdomen by Rey Gado. As the victim freed himself from his assailants, the latter fled. He immediately grabbed a stone and hurled it at them.

While he was proceeding home, he was chanced upon by barangay tanod Fernando Reyes who offered to help him home. At about 9 o'clock that evening, he reached their house. He immediately slumped on the floor and asked his father to bring him to the hospital. Upon his father's query, the victim identified Rey Gado as his assailant.

While aboard a jeep on their way to Perpetual Help Hospital at Las Piñas, Metro Manila, the victim once more related what happened to him, identifying the other companion of Rey Gado. He was given medical attention at Perpetual Help Hospital but about four hours thereafter, at around 2 o'clock early morning of January 31, 1992, he succumbed.

On September 15, 1992, an Information charging Rey Gado and Emma Gallos was filed in court. An order for the arrest of the accused was accordingly issued on September 17, 1992, but the same was left unserved. The trial court ordered the case to be archived on February 22, 1993. It was not until May 30, 1994 when Rey Gado, one of the two accused, was served an alias writ of arrest by the PNP Criminal Service Command of the Cavite Provincial Office while detained at Camp Vicente Lim, Calamba, Laguna due to a charge of Robbery/ Hold Up before the Municipal Trial Court of Carmona Cavite (p. 11, Record).

On November 21, 1994, both accused-appellant Rey Gado, and his co-accused Emma Gallos, who voluntarily appeared in court upon notice, were arraigned and both entered a plea of not guilty. Emma Gallos was then also ordered to be detained.

The two accused, on their part, sought refuge in their defense of alibi. Rey Gado claimed to have been tending the store of his brother at Sucat, Cupang, Muntinlupa, about five kilometers away from the place where the incident happened, while Emma Gallos averred that she was at home tending to her sick daughter.

The trial court rendered judgment acquitting Emma Gallos. Rey Gado was, however, convicted of the crime of murder and sentenced to suffer "the penalty of *reclusion perpetua* . . . and [to] indemnify the heirs of his victim the sum of P50,00.00 and to pay P50,000.00 as reimbursement for the medical and burial expenses . . ." Hence, the present appeal anchored on the following assigned errors:

I

THE LOWER COURT ERRED IN CONSIDERING THE AFFIDAVIT OF WITNESS FERNANDO REYES.

II

THE LOWER COURT ERRED IN CONSIDERING MELENCIO MANALANG'S TESTIMONY AS A DYING DECLARATION.

III

THE LOWER COURT ERRED IN NOT LENDING CREDENCE TO ACCUSED-APPELLANT'S ALIBI.

IV

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT.

After carefully going over accused-appellant's arguments as well as the evidentiary record, we find his appeal wanting in merit.

On the issue of witness Fernando Reyes's retraction, the trial court, in its order denying the motion for reconsideration of accused-appellant, explained thus:

After carefully evaluating the grounds relied upon in the MOTION FOR RECONSIDERATION AND/OR NEW TRIAL, this Court holds that the conviction of accused Rey Gado is not only based on the affidavit of the eye witness which admittedly was recanted by the affiant, but also on the declaration of the victim who told his father Melencio Manalang, Sr. that he was stabbed by accused; at a time when this victim Melencio Manalang, Jr. felt he was weakening, and therefore conscious of an impending death"

(p. 282, Record)

We find no further reason to entertain the argument of accused-appellant on this matter. We shall instead look into whether or not sufficient evidence remains to sustain the conviction of accused-appellant for the crime charged.

Accused-appellant vigorously takes exception to the trial court's admission of the testimony of Melencio Manalang, Sr., who testified in regard to the statements and declarations of his son concerning his assailants, claiming that the said declaration are not in the nature of a dying declaration for the simple reason that they were not made under a clear consciousness of an impending death.

We are not persuaded.

Forthwith, we must stress that with regard to the credibility of Melencio Manalang, Sr. as witness, we find no reason to disturb the trial court's finding. The settled and time-tested jurisprudence is that the findings and conclusions of the trial court on the credibility of witnesses enjoy the respect of appellate courts for the reason that trial courts have the advantage of observing the demeanor of witnesses as they testify (*People vs. Cabiles*, G.R. No. 112035, January 16, 1998; *People vs. Moran*, 241 SCRA 709 [1995]; *People vs. Gamiao*, 240 SCRA 254 [1995]). In the absence of any arbitrariness in the trial court's findings and evaluation of evidence which tends to show that it overlooked certain material facts and circumstances, such findings and evaluation of evidence should be respected on review (*People vs. Dio*, 226 SCRA 176 [1993]). The presiding judge of the trial court had the opportunity to actually observe the conduct and demeanor of the witnesses on the witness stand while being asked direct-examination questions by the prosecution, cross-examination questions by the defense, as well as clarificatory questions by the trial judge himself. Between the trial judge and this Court, the former is in a far better position to determine whether a witness is telling the truth or not. From the records before us we find no reason to disturb the trial court's assessment and to discredit Melencio Manalang, Sr. as a witness.

The central issue to be resolved is whether the statements, uttered by the victim before he died partake of the nature of a dying declaration or not.

The Court finds in the affirmative.

Through the dying declarations of the victim as related by his father, Melencio Manalang, Sr. before Atty. Pepito Tan at the National Bureau of Investigation, National Capital Region (Taft Avenue, Manila), the identity of the killer was established in this case, to wit:

07. T: Maari bang isalaysay mo ang buong pangyayari ayon sa pagkakakuwento sa iyo ng biktima na si MELECIO MANALANG, JR?

S: Ayon po sa aking anak, nag-inuman silang magbabarkada sa bahay ni JUANITO VICENTE at nang siya ay malasing na inihatid siya ni REY GADO at JUANITO VICENTE na may kasamang isang babae nagngangalang EMMA at isang lalaki na hindi ko alam ang pangalan na kapatid ni EMMA. Noong nasa daan na sila ng Fleur de Luz St. sa ilalim ng puno ng aratiles ay doon na raw siya sinaksak ni REY GADO sa may tiyan. Noong nakabitaw na si MELECIO MANALANG, JR. ay nakadampot pa siya ng bato at pinukol ang grupo nina REY GADO na nakanya-kanya na ng takbo. Noong pauwi na siya ay nasalubong daw niya si FERNANDO REYES, isang Barangay Tanod na siyang naghatid sa kanya sa bahay. Pagdating sa bahay ay inihatid na namin siya sa hospital ng Perpetual Help Medical Center, Las Piñas, Metro Mla. na kung saan siya ay nalagutan ng hininga ng bandang alas-dos ng madaling araw ng January 31, 1992.

(p. 1, Exhibit E)

The witness reiterated the material points of this sworn statement during his testimony before the trial court. He also established the basis for the admissibility of the dying declaration, as an exception to the hearsay rule, to wit:

COPY

- Q** You said that the victim when he arrived at your house he was holding his wounds?
- A** Yes, your honor.
- Q** Immediately when he arrived at your house, what did he do?
- A** He sat down, your honor.
- Q** He sat down, where?
- A** He sat down on the floor, your honor.
- Q** And, you talked at him?
- A** Yes, your honor.
- Q** And, he was just sitting on the floor, and was he was holding his wounds?
- A** Yes, your honor.
- Q** And, did you see any blood coming from his wounds?
- A** Yes, your honor.
- Q** Now, did you ask him how he felt?
- A** He told me to bring him to the hospital, your honor.
- Q** Did he tell you why he should be taken to the hospital?
- A** Because he is getting weak, your honor.