

SECOND DIVISION

[G.R. No. 116721, May 29, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NEMESIO BALANO AND MORENO ALMENIANA, ACCUSED-
APPELLANTS.**

D E C I S I O N

ROMERO, J.:

This is an appeal from the decision^[1] dated February 7, 1994, of the Regional Trial Court of Iloilo City, Branch 24,^[2] in Criminal Case No. 36513, convincing accused-appellants Nemesio Balano and Moreno Almeniana of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim Allan Ardonio, jointly and severally, the amount of P40,000.00 as burial and funeral expenses, P50,000.00 as compensatory damages, and P20,000.00 as moral damages and to pay the costs.^[3]

The accused-apellants, together with Pama, Basulgan, Moreno, and Sologastua, were charged with the crime of murder before the trial court in an information^[4] which reads.

"That on or about April 4, 1991, in the Municipality of Lemery, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms of unknown caliber, conspiring, confederating, and mutually helping one another and with a deliberate purpose to kill, taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, beat and shoot Allan Ardonio inflicting upon him gunshot wounds on the head and other injuries on the various parts of his body, thereby causing his death."

The records of the case show the following facts:

On April 3, 1991, a coronation and public dance was held at Barangay Northwest Zone, Lemery, Province of Iloilo to celebrate the barangay fiesta. At around 11:00 o'clock on said date, a fistfight in the dance hall ensued between Allan Ardonio and Emmanuel "Eiman" Balano. The fight arose when a certain Nenita Elisana, who was then sitting next to Allan, rejected Eiman's request for a dance. Eiman allegedly approached Allan and hit him. In turn, the latter retaliated by hitting the former in the back and causing him to fall down. They were pacified by observers who brought them before then Lemery Police Chief, accused-appellant Nemesio Balano who eventually settled the conflict. Nemesio was then also in the dance hall, with his co-accused-appellant Moreno Almeniana, and Noli Pama, Igmedio Basulgan, Danilo Moreno, and Arnold Sologastua, all members of the police force and Citizen Armed Forces Geographical Units (CAFGU) of Lemery.

A few minutes past midnight, a gunshot was heard outside the dance hall, followed by a burst of gunfire, causing commotion and panic among the revelers. Thereafter, the body of Eiman was found sprawled outside the dance hall. He had been shot to death. Within the hour, Allan's dead body was likewise discovered a few meters from the dance hall. He had been shot twice in the head.

Allan's mother Violeta testified that at around 1:00 o'clock a.m. on April 4, 1991, while she and her son Jagib were on their way home from the dance hall, they saw Allan being dragged by the accused-appellants. They followed accused-appellants' group with Violeta pleading for her son's life. Her pleas, however, fell on deaf ears as the accused-appellants and their companions kicked and boxed Allan, whose face was already bloodied. She saw how Allan fell to the ground and, while kneeling, was shot by Nemesio in the head, and again by Almeniana when Allan was already prostrate. Fearing for their own lives, Violeta and Jagib fled to Ramon Ardonio's house. When the Ardonios returned to the scene of the crime, neither Allan nor any of the accused-appellants was there. They then proceeded to the hospital in Sara, Iloilo where they found Allan who was already dead.

Elvis Calubia, a friend of Allan, testified that he saw Nemesio and his companions at Ramon Ardonio's house (grandfather of Allan), looking for Allan. He later saw them take Allan with them.

Dr. Ricardo Jaboneta, medico-legal expert of the National Bureau of Investigation, who autopsied the victim's body, testified that the latter sustained two gunshot wounds in the head.^[5] The victim died of traumatic shock secondary to multiple gunshot wounds in the head.^[6]

Upon arraignment, all of the accused pleaded not guilty.

Accused-appellants interposed the defense of alibi and denial.

Nemesio declared that when he first heard gunfire, he went out to investigate, saw the dead body of his nephew Eiman, and learned that the assailant was a certain Allan Ardonio. He and his men went out to search for Allan, found him in his grandfather's "bodega," and brought him to the municipal building. Upon investigation, Allan denied killing Eiman and claimed that the real killers were his brother, Raymund and his father, Adolfo Ardonio. Consequently, Nemesio allegedly released Allan. He added that on their way to the house of Adolfo and Raymund they heard gunshots while walking in front of the schoolhouse. They then proceeded to the hall where they saw the body of Allan. Nemesio claimed that he even helped load Allan's body in the jeep of a certain Emilio Ansuyon Jr.

For his part, accused-appellant Almeniana alleged that he was not present when his co-accused saw the body of the victim since he was looking for his son.

The defense likewise interposed the theory that the assailant could have been one of Eiman's own relatives.

After trial, Judge Norberto E. Devera, Jr. rendered a decision dated February 7, 1994, the dispositive portion of which states, thus:

"WHEREFORE, premises considered, the Court finds NEMESIO BALANO and MORENO ALMENIANA guilty beyond reasonable doubt of the crime of Murder and hereby sentences each to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of Allan Ardonio, jointly and severally, the sum of Forty Thousand Pesos (P40,000.00) as burial and funeral expenses, to pay likewise said heirs, jointly and severally; the sum of Fifty Thousand (P50,000.00) as compensatory damages and another sum of Twenty Thousand Pesos (P20,000.00) as moral damages and to pay the costs. Accordingly, their property bonds are cancelled and pursuant to the directive of the Supreme Court, the said accused are immediately placed under custody.

As regards accused Noli Pama, Igmedio Basulgan, Danilo Moreno, and Arnulfo Sologastua, they are hereby acquitted of the charge. Their property bonds are ordered cancelled.

SO ORDERED."

In this appeal, accused-appellants maintain their innocence and claim that the trial court erred in finding them guilty of the crime charged.

We find the appeal unmeritorious.

Accused-appellants argue that Violeta could not have seen the shooting of her son Allan because she only learned of the incident from defense witness Leizle Bayona. At the time, Violeta was allegedly at the house of a certain Sergio Magsongsong so she could not have witnessed the shooting of Allan.

The trial court correctly disregarded the testimony of Bayona. Her testimony pales into insignificance with the positive identification of the murderers by the victim's mother and brother. At best, it can be said that Bayona's testimony was a mere afterthought, considering that she executed an affidavit eight months after the incident.

This Court has consistently held that when the issue is one of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. This rule, however, is not without exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the outcome of the case.^[7] None of these exceptions appears to be present in this case.

The testimonies of Violeta and Jagib are consistent and unequivocal eyewitness accounts positively identifying Nemesio Balano and Moreno Almeniana as the perpetrators of the crime. Both of them testified that accused-appellants shot the victim, which caused his death, thereby placing them at the scene of the crime and pinpointing their respective participation therein.

The pertinent portions of the testimony of Violeta Ardonio in the direct examination are quoted as follows: