

FIRST DIVISION

[G.R. No. 112982. December 29, 1995.]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, **vs. GERUNDIO PRADO**, *alias "ERIC"*, *accused-appellant*.

The Solicitor General for plaintiff-appellee.

Carlito M. Soriano for accused-appellant.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; INCONSISTENCIES ON MINOR DETAILS SERVE TO STRENGTHEN CREDIBILITY. — A perusal of the record reveals that, indeed, there were inconsistencies in the testimonies of the eyewitnesses Cornelio Aquino and Eduardo Macam, but we perceive these inconsistencies as trivialities on inconsequential details that neither affect the credibility of the witnesses. Inconsistencies and discrepancies on minor details of the testimony of a witness serve instead to strengthen his credibility as there are badges of truth rather than *indicia* of falsehood. The most candid witnesses oftentimes make mistakes and fall into confused and inconsistent statements but such honest lapses do not necessarily affect their credibility. Far from eroding the effectiveness of the testimonies of the two witnesses, such trivial differences in fact constitute signs of veracity.

2. ID.; ID.; WEIGHT AND SUFFICIENCY; POLICE BLOTTER; FAILURE TO LIST NAMES OF ACCUSED THEREIN, NOT SUFFICIENT TO RAISE DOUBT AS TO POSITIVE IDENTIFICATION MADE BY WITNESSES. — While both the prosecution and defense witnesses admitted that the name of the accused-appellant was not listed in the police blotter when Macam reported the incident to the police authorities, such was not sufficient to raise doubt as to the positive identification made by the eyewitnesses Aquino and Macam upon the accused-appellant. Events which occurred during the investigation and after the death of the victim tended to support the testimony of Macam. Cardinoza even admitted that after receiving Macam's report, they all went to the crime scene to investigate and later searched the houses of the accused named in the information, for which reason, accused-appellant was arrested at his sister's house pretending to be asleep and beside him was the gun allegedly used in shooting the victim. This admission is a clear and convincing proof that they already knew the names of the assailants during their initial investigation even if those names did not appear in the police blotter. A police blotter is taken *ex parte*. Hence, in the same manner, it could be just as incomplete and inaccurate, sometimes from other partial suggestions or for want of suggestions or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion to his memory and for his accurate recollection of all that pertains to the subject. Entries in official records are only *prima facie* evidence

of facts therein stated and are not conclusive.

3. ID.; ID.; CREDIBILITY; UNAVAILING WHERE ACCUSED WAS POSITIVELY IDENTIFIED. — The case of *People v. Salas* cited by accused-appellant regarding alibi as a defense is not in point in the case at bench. Such defense is applicable only where reasonable doubt exists as to the identity of the assailants. In the present case, accused-appellant was positively identified by eyewitnesses Cornelio Aquino and Eduardo Macam. Alibi is a weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim pointing to the accused-appellant as the culprit.

4. ID.; ID.; ID.; ABSENCE OF EVIL MOTIVE TO FALSELY CHARGE ACCUSED. — No evil motive has been proven against both witnesses that might prompt them to testify falsely against the appellant nor was there any reason on their part to incriminate appellant but justice. The absence of motive on the part of a witness to make a phony accusation against the accused enhances his credibility as a witness.

5. ID.; ID.; ID.; FINDINGS OF FACT OF TRIAL COURT, GENERALLY GIVEN GREAT WEIGHT ON APPEAL. — It is well settled that findings of fact of trial courts, particularly with respect to the credibility of witnesses who personally appeared and testified before them, must be given great weight and should not be disturbed by the appellate courts.

DECISION

HERMOSISIMA, JR., / :

Accused-appellant Gerundio Prado, Luis Prado, Oscar Prado-Posadas, and Brigido Prado were charged with the crime of Murder in the following Information which is dated on September 29, 1992:

"That on or about the 21st day of July, 1992 at Barangay Quintong, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating, and mutually helping one another, with evident premeditation, treachery, abuse of superior strength and with intent to kill, did, then and there, wilfully, unlawfully and feloniously, assault, box, maul and then shoot one Severino Aquino, Jr., incumbent barangay captain of Quintong, this City, with the use of a long firearm which caused the death of the said victim as a consequence." ¹

Upon being arraigned on January 11, 1993, all of the accused, with the assistance of counsel, pleaded not guilty to the crime charged. ² Thereafter, trial on the merits ensued.

The antecedent facts are best narrated by the prosecution in its Brief:

"On July 21, 1992, at 5:00 o'clock in the afternoon, Brgy. Captain

Severino Aquino of Barangay Quintong, San Carlos City, Pangasinan, met with Cornelio Aquino and Eduardo Macam and they all agreed to take the first trip to Manila at 1:00 o'clock in the morning of the next day (TSN, March 2, 1993, p. 5). As Severino still had to attend the birthday party of Kagawad Maxima Ventura whose house is 300 meters away, he promised Cornelio and Eduardo that he would be back by 10:00 o'clock that same evening for their trip (*Id.*).

At the party, Severino joined the main celebrant, Maximo, together with the latter's first cousins appellant Gerundio Prado, Luis Prado and Oscar "Butch" Prado-Posadas who were then drinking liquor (TSN, March 9, 1993, p. 6). Suddenly, Severino got visibly irked by Luis Prado's constant meddling in the former's political debate with appellant and co-accused Oscar Posadas (*Id.*). Before the heated argument could escalate any further, Maximo immediately pulled Severino to the sala to pacify him saying it was a very petty matter to pick a fight with the Prado cousins (*Id.*).

Thereafter, Maxima returned to the kitchen to talk to the Prado cousins while Oscar Posadas, in turn, approached Severino near the sala (*Id.*, p. 7). Oscar later repaired to the kitchen and complained that Severino was hard to talk to, to which, Luis Prado uttered, "so he is hard to talk with, do not worry he will be shot tomorrow" (*Id.*). Severino bristled after hearing Luis' statement that he was about to take a glass to throw the same on Luis' face Maxima timely held back Severino and at the same time, stopping Oscar from further attacking Severino (*Id.*).

After the unfortunate incident, Severino left Maximo's house at approximately 11:00 o'clock in the evening taking the usual route towards the east en route to his house, while appellant and his co-accused, Luis and Oscar, took the short cut towards the north leading to the main road (*Id.*; TSN, March 10, 1993, p. 6).

Meanwhile, after Severino failed to show up on the appointed time at 10:00 o'clock that evening at his house, Cornelio and Eduardo decided to follow him to Maximo's house (TSN, November 17, 1992, p. 11). But before reaching the same and after walking only twenty (20) meters, the two witnessed Severino being alternately mauled by Oscar Prado-Posadas, Brigido Prado and Luis Prado (TSN, March 2, 1993, p. 6). Luis held Severino's hands while Oscar and Brigido pummelled Severino's body until he collapsed (TSN, March 4, 1993, p. 6). As Severino desperately summoned his remaining strength to stand up, Cornelio and Eduardo saw appellant coming out from the compound of his uncle, Juan Prado, to shoot Severino with his long firearm (TSN, March 2, 1993, p. 7). Seconds after, Eduardo saw blood gush forth from Severino's shoulder (*Id.*, p. 9). In a state of shock and fearing also for their own safety as the nearby houses were also appellant's relatives, Eduardo instructed Cornelio to immediately inform Severino's family of the incident while he would seek police help and report the same to the nearest police precinct (*Id.*).

The sisters of Severino, Ester and Sarah Aquino, who were informed by Cornelio, hurried back to the crime scene only to find their injured brother already sprawled on the street (TSN, March 2, 1993, pp. 34-35). Just before he died, Severino haltingly narrated to his sisters

how he was shot by appellant after being helplessly mauled by appellant's co-accused (*Id.*, p. 36). Thereafter, Sarah immediately returned to the house to get a ride in order to rush Severino to the emergency ward of VMEI Hospital where he expired, after last minute medical measures were administered in vain." 4

The accused interposed the defense of denial and alibi. Accused Oscar Posadas and Luis Ventura admitted the fact that they attended the birthday party of Maximo Ventura, Jr., but they claimed that they left the party at around 11:00 P.M. together with accused Gerundio Prado. They returned to Manila that same night. 4 Accused Brigido Prado denied having attended the party and declared that he was at the kitchen of his home when the alleged incident happened. 5 Accused Gerundio Prado did not testify. In addition, the defense presented the two police officers who conducted the investigation of the alleged incident, namely: Armando Patayan and Virgilio Cardinoza, for the purpose of contradicting the testimonies of the prosecution eyewitnesses.

After trial, the court *a quo* rendered judgment finding accused-appellant Gerundio Pardo alias Eric guilty of the crime charged and acquitted the other three accused.

The dispositive portion of the decision reads:

"WHEREFORE, the three (3) accused — Oscar 'Butch' Prado Posadas, Luis 'Toing' Prado, and Brigido 'Bening' Prado, are hereby acquitted — and the fourth accused, Gerundio Prado 'Eric' is hereby found guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of imprisonment of Reclusion Perpetua and to indemnify the heirs of the deceased, Severino Aquino, Jr., in the total amount of P223,500.00 and P20,000.00 as attorney's fee and to pay costs." 6

In ratiocination, the court *a quo* pontificated:

"There is no doubt about the criminal culpability of Accused Gerundio 'Eric' Prado for killing the herein victim, and the commission of the criminal act was attended by the qualifying circumstance of treachery, as shown by the circumstance that the victim was knocked down to the ground as a consequence of the boxing, kicking and punching by his co-accused, and when the victim stood up, clearly helpless, said Accused Gerundio 'Eric' Prado, shot him several times with a carbine rifle, a high-powered weapon, until the victim fell down dying, these facts unquestionably showing that said accused employed a means, method and form of execution thereof which tended directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make (Art. 14, par. 16, Revised Penal Code).

The issue now left for the determination of the Court is the liability of the three (3) aforementioned accused, namely: Luis 'Toing' Prado, Oscar 'Butch' Prado-Posadas and Brigido 'Bening' Prado for the death of the victim. There is no doubt that the three aforementioned accused jointly and simultaneously . . . as Accused Luis 'Toing' Prado

held on the victim, his two co-accused, Oscar 'Butch' Posadas Prado and Brigido 'Bening' Prado boxed, kicked and punched him until he fell down. These three accused were animated by one and the same purpose — and, that is, to maul the victim. It is very clear, therefore, that each one is liable for his acts and the acts of the others, there being a conspiracy among them. And from the autopsy report, the injuries suffered by the victim, other than the gunshot wound, are not serious; as a matter of fact, they can be charged on the basis of a slight physical injuries only. However, this crime is only a light felony (Arts. 266, Revised Penal Code) and thus had already prescribed when the Information in the instant case was filed (Art. 90, Revised Penal Code).

However, the conspiracy among the three (3) aforementioned accused in mauling the victim does not necessarily mean that they conspired with their co-accused Gerundio 'Eric' Prado. From the testimonies of the prosecution's two eyewitnesses — the aforementioned, Eduardo Macam and Cornelio Aquino — there could not have been a conspiracy between the three (3) aforementioned accused, on the one hand, and the fourth accused, Gerundio 'Eric' Prado, on the other hand. The latter had no participation in the initial mauling of the victim, as it was only when the victim fell down and, then, stood up, that said fourth accused shot him several times causing his death. There is no evidence of concerted, joint and simultaneous action — no connection between the mauling and the shooting. Hence, Accused Gerundio 'Eric' Prado alone is liable for Murder." **7**

Accused-appellant now comes before us assailing the decision of the court *a quo* with the following assignment of errors:

I

THE HONORABLE TRIAL COURT ERRED IN ITS FINDINGS OF FACTS WHICH HAD THEY BEEN IN ACCORDANCE WITH THE EVIDENCE ADDUCED WILL SUFFICE TO SUPPORT A JUDGMENT OF ACQUITTAL FOR ACCUSED-APPELLANT.

II

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT BECAUSE THE DEFENSE IS NOTHING BUT ALIBI. **8**

Accused-appellant contends that it was impossible for the prosecution eyewitness Eduardo Macam to have actually seen the incident and be able to identify the assailants, because of the latter's inability to report the names of the assailant in the police blotter. **9** He further added that eyewitnesses Cornelio Aquino and Eduardo Macam were merely coached witnesses and did not act see the incident because of the inconsistencies in their testimonies. **10** As such, there could not have been any positive identification of the assailants. Anent the defense of alibi, accused-appellant cited the case of *People v. Salas* **11** that although defense of alibi may stand searching scrutiny, nevertheless, it acquires commensurate strength where no positive and proper identification has been made by the witness, on the offender, as the prosecution still has the *onus probandi* in establishing the guilt of the accused beyond reasonable

doubt, and the weakness of the defense does not relieve it of this responsibility.

A perusal of the record reveals that, indeed, there were inconsistencies in the testimonies of the eyewitnesses Cornelio Aquino and Eduardo Macam, but we perceive these inconsistencies as trivialities on inconsequential details that neither affect the credibility of the witnesses. ¹² Inconsistencies and discrepancies on minor details of the testimony of a witness serve instead to strengthen his credibility as they are badges of truth rather than *indicia* of falsehood. ¹³ The most candid witnesses oftentimes make mistakes and fall into confused and inconsistent statements but such honest lapses do not necessarily affect their credibility. ¹⁴ Far from eroding the effectiveness of the testimonies of the two witnesses, such trivial differences in fact constitute signs of veracity. ¹⁵

While both the prosecution and defense witnesses admitted that the name of the accused-appellant was not listed in the police blotter when Macam reported the incident to the police authorities, such was not sufficient to raise doubt as to the positive identification made by the eyewitnesses Aquino and Macam upon the accused-appellant. Special Police Officer Virgilio Cardinoza, who testified for the prosecution admitted having received and logged the report of eyewitness Macam, but claimed that the latter, when asked, denied knowing who the assailants were. ¹⁶ Macam, however, stated otherwise in open court:

"ATTY. FERMIN

Q. Immediately after the incident you testified to before, according to you, you made a report to the police officer, the desk sergeant then is police officer Cardinoza, and according to him when he asked you the names of the persons responsible for the shooting of barangay captain Aquino, you said, you do not know because you just woke up or awakened up, what can you say to that?

A. I reported to them the incident because I know that the perpetrators of the crime was Gerundio Prado, sir.

COURT

Q Did you mention that?

A Yes, I told them and they noted on a piece of paper, your Honor.

ATTY. FERMIN

Q Aside from, Gerundio Prado were there other persons you reported as the perpetrators of the crime?

A There were still three (3), sir.

Q Who were they?

A Brigido Prado, Luis Prado and Butch Posadas, sir.

Q According to the testimonies of Sergeant Patayan and police officer Mario Fermin, you were not with them when they were searching the houses of the suspects, what can you say to that?

A I was with them because I was then holding an emergency light, sir." 17

Events which occurred during the investigation and after the death of the victim tended to support the testimony of Macam. Cardinoza even admitted that after receiving Macam's report, they all went to the crime scene to investigate and later searched the houses of the accused named in the information, for which reason, accused-appellant was arrested at his sister's house pretending to be asleep and beside him was the gun allegedly used in shooting the victim. 18 This admission is a clear and convincing proof that they already knew the names of the assailants during their initial investigation even if those names did not appear in the police blotter. A police blotter is taken *ex parte*. Hence, in the same manner, it could be just as incomplete and inaccurate, sometimes from other partial suggestions or for want of suggestions or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion to his memory and for his accurate recollection of all that pertains to the subject. 19 Entries in official records are only *prima facie* evidence of facts therein stated and are not conclusive. 20

The case of *People v. Salas* 21 cited by accused-appellant regarding alibi as a defense is not in point in the case at bench. Such defense is applicable only where reasonable doubt exists as to the identity of the assailants. In the present case, accused-appellant was positively identified by eyewitnesses Cornelio Aquino and Eduardo Macam. Alibi is a weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim pointing to the accused-appellant as the culprit. 22 Moreover, the gun used in shooting the victim was found in the possession of the accused-appellant following his arrest. 23 The allegation of the defense that the gun was found by SPO Mario Fermin 24 along the alley on the way to accused-appellant's house and that it was owned by the victim's brother, Roberto Aquino, were belied by the straightforward rebuttal testimonies of eyewitnesses Eduardo Macam and Roberto Aquino. 25 No evil motive has been proven against both witnesses that might prompt them to testify falsely against the appellant nor was there any reason on their part to incriminate appellant but justice. 26 The absence of motive on the part of a witness to make a phony accusation against the accused enhances his credibility as a witness. 27 It is well settled that findings of fact of trial courts, particularly with respect to the credibility of witnesses who personally appeared and testified before them, must be given great weight and should not be disturbed by the appellate courts. 28

Considering all of the foregoing, we find and so hold that the trial court committed no error in finding that accused-appellant is guilty beyond reasonable doubt of the crime of murder as charged.

WHEREFORE, the appealed decision is hereby AFFIRMED *in toto*. Costs against the appellant.

SO ORDERED.

Footnotes

1. *Rollo*, p. 1.
2. Record, Vol. 1, p. 172.
3. *Rollo*, pp. 74-77.
4. TSN, May 17, 1993, p. 90.
5. TSN, May 5, 1993, p. 74.
6. *Rollo*, p. 59.
7. *Rollo*, pp. 58-59.
8. *Rollo*, p. 48.
9. Appellant's Brief, p. 6.
10. *Rollo*, p. 48, Appellant's Brief, p. 5.
11. 66 SCRA 126.
12. *People v. Villaruel*, 238 SCRA 408.
13. *People v. Ponayo*, 235 SCRA 226.
14. *People v. Mendoza*, 236 SCRA 666.
15. *Ibid.*
16. TSN, April 28, 1993, p. 39.
17. Original TSN, May 20, 1993, pp. 8-9.
18. TSN, April 28, 1993, p. 49.
19. *Ford v. CA*, 186 SCRA 21.
20. *Ibid.*
21. 66 SCRA 126.
22. *People v. Tayco*, 235 SCRA 610.
23. TSN, March 2, 1993, pp. 10-13.
24. TSN, April 29, 1993, p. 5.
25. TSN, May 20, 1993, pp. 86 and 92.
26. *People v. Fuertes*, 229 SCRA 289.
27. *People v. Maguikay*, 237 SCRA 587.
28. *People v. Ibay*, 233 SCRA 15.