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SECOND DIVISION

[G.R. Nos. L-49859-60. February 20, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEJANDRO VALENTINO y TOLENTINO,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONIES OF WITNESSES.—** The alibi of the appellant cannot prevail over the positive testimony of Jose Ejes and Severino Asi who identified the appellant as the gunman who fired the shots that caused the death of Vicente Berberabe and Pacita Bulaklak. These witnesses were very, near the appellant when he fired those shots so that they could not have been mistaken in their identification. Jose Ejes declared that the appellant, who was then wearing a blue shirt with long sleeves, was only about three (3) brazas from him when he shot at Vicente Berberabe and Pacita Bulaklak, while Severino Asi stated that he was about three and a half (3-1/2) brazas behind Vicente Berberabe when the appellant fired at the deceased at a distance of one (1) braza.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN THEIR TESTIMONIES.—** Counsel for the appellant, however, points to some inconsistencies and contradictions in their testimonies which allegedly render their testimonies unworthy of credit. But, the inconsistencies and contradictions pointed out refer to minor details which do not destroy the credibility of said witnesses.

3. **ID.; ID.; ID.; APPRAISAL THEREOF BEST ADDRESSED TO THE TRIAL COURT.—** At any rate that issue is one of credibility of witnesses and the trial court, "after having heard the testimonies of the witnesses for the prosecution and of the defense and after having observed their deportment, behavior and manner of testifying during the trial;" stated that it "is convinced that the witnesses for the prosecution are telling the truth." The trial court further said that the witnesses for the prosecution "testified in a straight-forward manner, sincere and candid in answering all questions propounded during the direct

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examination as well as during the cross-examination." We find also that these witnesses have no motive to testify falsely against the accused-appellant.

DECISION

CONCEPCION, JR., *J.*:

Appeal from the judgment of the Circuit Criminal Court of Batangas City finding the accused-appellant Alejandro Valentino y Tolentino guilty of the crimes of: (a) Murder in Crim. Case No. CCC-VIII-191 (71), Batangas City and sentencing him to suffer imprisonment of from 17 years, 4 months and 1 day to 20 years of *reclusion temporal*, and to indemnify the heirs of the deceased Vicente Berberabe in the amount of P12,000.00; and (b) Homicide in Crim. Case No. CCC-VIII-192 (71), Batangas City and sentencing him to suffer an indeterminate penalty of from 10 years and 1 day of *prision mayor*, as minimum, to 14 years and 8 months of *reclusion temporal*, as maximum, and to indemnify the heirs of Pacita Bulaklak in the amount of P12,000.00, and to pay the costs.[1]

The People's version of the facts of the cases is as follows:

"On May 21, 1971, at about three o'clock in the afternoon, Vicente Berberabe, together with Severino Asi, went to a cockpit at Batangas City (*p. 76, t.s.n., July 24, 1972*). While Vicente Berberabe was entering the said cockpit followed by Severino Asi, they were met by the accused Alejandro Valentino, who pulled his gun and shot three times at Berberabe.

Vicente Berberabe, was hit and was brought to the Batangas Provincial Hospital, Batangas City, wherein Dr. Ramon A. Pastor of said hospital, who treated him found the following injuries:

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[1] Upon a review of the records, the Intermediate Appellate Court, to whom the appeal was addressed found that the proper penalty to be imposed upon the accused in the Murder case is *reclusion perpetua* and certified the cases to the Court for review.

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'GUNSHOT WOUNDS.

"(1) POE, oval 1.1 x 1.4 cm. mid mandibular area, right directed posteriorly and to the left fracturing both side of the mandible.

POX, lacerated and everted 2 cms x 1 cm at the left lower parotim area below the left ear lobule.

"(2) POW, 1.1 cm circular at left anterior axillary line 2 inches below the axillary fold directed posteriorly and medially downward with POX lacerated 1.5 x 1 cm at left vertebral area at level of inferior angle of scapula 1 inch from the midline.

"Patient died in this hospital at 4:20 p.m., May 21, 1971" (*p. 18, Rec.*)

Aside from Vicente Berberabe, a woman vendor inside the said cockpit named Pacita Bulaklak was also hit by the bullets fired by the accused (*p. 15, t s.n., July 24, 1972*). Pacita Bulaklak died on May 22, 1972, and an autopsy performed by Dr. Alberto M. Reyes, a medico legal officer of the National Bureau of Investigation, revealed the following injuries:

'Cyanosis, lips and nailbeds.

'Hematoma, scalp, generalized.

'Gunshot wound, entrance, scalp, parieto-occipital region, 1.5 to the left of the midline, 0.5 cm above and 11.0 cm, posterior the left external auditory meatus, oval in shape, edges inverted, 1.0 x 1.1 cm in size including a contusion collar widest (0.1 cm) at its infero-medial border, directed forward, upward and laterally, involving the whole thickness of the scalp, producing a punched-in fracture of the left parietal bone, grazing the surface of the parietal lobe of the brain, with the slug lodged and recovered at the inner table of left parietal bone.

'Hemorrhages, subdural, parieto-occipital, both sides, and suber-arachnoidal, generalized.

'Heart chambers contain a small amount of dark fluid blood.

'Other visceral organs, congested.

'Stomach, almost full of partially digested rice and other food particles.

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'CAUSE OF DEATH: Gunshot wound of the head.

'REMARKS" - One (1) deformed slug, recovered and submitted to NBI Ballistics Division for examination. (*p. 18, Rec. of CCC-VIII-192[71].*"

The accused-appellant, upon the other hand, denied the commission of the crimes and interposed the defense of alibi. He claimed that he was in San Miguel, Bulacan, the whole day of May 21, 1971.

We find no merit in the appeal. The alibi of the appellant cannot prevail over the positive testimony of Jose Ejes and Severino Asi who identified the appellant as the gunman who fired the shots that caused the death of Vicente Berberabe and Pacita Bulaklak. These witnesses were very, near the appellant when he fired those shots so that they could not have been mistaken in their identification. Jose Ejes declared that the appellant, who was then wearing a blue shirt with long sleeves, was only about three (3) brazas from him when he shot at Vicente Berberabe and Pacita Bulaklak, while Severino Asi stated that he was about three and a half (3-1/2) brazas behind Vicente Berberabe when the appellant fired at the deceased at a distance of one (1) braza.

Counsel for the appellant, however, points to some inconsistencies and contradictions in their testimonies which allegedly render their testimonies unworthy of credit. But, the inconsistencies and contradictions pointed out refer to minor details which do not destroy the credibility of said witnesses.

At any rate that issue is one of credibility of witnesses and the trial court, "after having heard the testimonies of the witnesses for the prosecution and of the defense and after having observed their deportment, behavior and manner of testifying during the trial;" stated that it "is convinced that the witnesses for the prosecution are telling the truth." The trial court further said that the witnesses for the prosecution "testified in a straight-forward manner, sincere and candid in answering all questions propounded during the direct examination as well as during the cross-examination." We find also that these witnesses have no motive to testify falsely against the accused-appellant.

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It results that the trial court did not err in finding the accused-appellant guilty of the crime of Murder in the killing of Vicente Berberabe and Homicide in the death of Pacita Bulaklak. As found by the Intermediate Appellate Court, the proper penalty to be imposed upon the appellant in the Murder case should be *reclusion perpetua* and with respect to the crime of Homicide, the maximum period is short by one (1) day and should be increased accordingly. The indemnity to be paid to the heirs of Vicente Berberabe and Pacita Bulaklak should also be increased to P30,000.00 for each victim.

WHEREFORE, with the modification above indicated, the judgment appealed from should be, as it is hereby, AFFIRMED. With costs against the accused-appellant.

IT IS SO ORDERED.

Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.

EN BANC

[G.R. No. L-41265. February 27, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELICIANO PATOLA and EUNILLO SANGAYON,** *accused whose death sentence is under review.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.—** Patola's defense was that at the time the robbery with rape was committed he was in Barrio Tuganay, Carmen, Davao del Norte. Sangayon's alibi was that he was in Panabo, Davao. The trial court reasoned out that the distances of Panabo and Carmen to Maco, the scene of the crime, did not preclude the accused from committing