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EN BANC

[G.R. No. 53834. November 24, 1986]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **MANUEL TAN, JR. y EBLAGAS *alias* "Boy Tan," and HECTOR SELMO Y FLORES,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; WEAK AS A DEFENSE IN THE FACE OF POSITIVE IDENTIFICATION; CASE AT BAR.** — The issue in this case, therefore, rests on credibility. In convicting the appellants, the court relied heavily on the testimony of Nestor Navarro. After a careful review of the evidence on record, having in mind the seriousness of the crime committed, We find no plausible reason to hold otherwise. Nestor Navarro's categorical declarations that Hector Selmo urged Boy Tan to kill the driver, and thereafter, Manuel Tan, Jr. struck and shot the victim, Mariano de Guzman, Jr. on the head using a .45 caliber gun, and that consequently, the two took the Ford Fiera, are entitled to far more credence than appellants' denial and non-corroborated defense of alibi. It cannot be gainsaid that alibi is a weak defense. In the face of Nestor Navarro's positive identification of the appellants as the perpetrators of the crime, the alibi dwindles into nothingness (127 SCRA 242, *People vs. Vengco*).

2. **ID.; ID.; DETERMINATION OF VALUES AND CREDIBILITY THEREOF; POSITIVE TESTIMONY OF LONE WITNESS ACCORDED MORE WEIGHT THAN CORROBORATIVE TESTIMONIES OF APPELLANTS; CASE AT BAR.**— The claim of Manuel Tan, Jr. that his version, fully corroborating Hector Selmo's testimony that the latter did not join the group to Guagua, Pampanga, should be accorded more weight and credence than the lone testimony of Nestor Navarro implicating Hector Selmo, is self-serving and untenable. The appellants are co-accused with a common defense of alibi. It is, therefore, to be expected that both would give corroborative testimonies to prove their claim even to the extent of distorting the truth. Even granting that Navarro's testimony was not corroborated, as contended, the same is still sufficient to convict his co-accused, if and when the court gives it full faith. In the determination of the values and credibility of evidence, witnesses

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are to be weighed and not numbered. (*People vs. Argana*, 10 SCRA 311) The rule is that the testimony of only one witness, if credible and positive, is sufficient. Navarro's testimony, however, is not wanting in corroboration. The physical and medical findings on the body of the victim confirm Navarro's testimony that the victim was struck with a gun and was shot in the head. The stolen jeep was recovered in Legaspi City, the three tires missing, by its owner Angelo David of San Fernando, Pampanga with the assistance of the Police Force of San Fernando, Pampanga.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; CONCLUSIONS OF TRIAL JUDGE COMMAND GREAT RESPECT AND CONSIDERATION.** — Appellants warm that Navarro's testimony comes from a polluted source for he was originally a co-accused in the information. We find Navarro's testimony trustworthy and credible for his narration of the sequence of events that transpired and the behavior of the appellants from the time they returned to San Fernando from Angeles City is natural, probable and has the earmarks of truth. Navarro could not have narrated such facts in such detail had they not actually occurred. It is well-settled in our jurisdiction that conclusions of the trial judge, regarding the credibility of witnesses, command great respect and consideration, specially when, as in this particular case, they are supported by the evidence on record.

4. **CRIMINAL LAW; MOTIVE; UNESSENTIAL ABSENT ANY DOUBT AS TO IDENTITIES OF PERPETRATORS.** — Anent appellants' insistence that Navarro's testimony failed to show the motive of the killing, suffice it to state that proof of motive is unessential for there is no doubt as to the identities of the perpetrators of the crime. (*People vs. Madera*, 57 SCRA 349; People vs. Guba, 42 SCRA 109).

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Moises Sevilla Ocampo* for accused-appellant Selmo.
*Edward I. Rafael* for accused-appellant Tan.

## DECISION

**PARAS, *J.*:**

This is an appeal from the decision of the Court of First Instance of Pampanga, Fifth Judicial District, Branch III, finding appellants,

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Manuel Tan, Jr. y Eblagas, alias "Boy Tan" and Hector Selmo y Flores guilty beyond reasonable doubt of the crime of "Robbery with Homicide."

Co-accused Nestor Navarro y Catingco pleaded guilty to the aforesaid offense charged in the information and was sentenced accordingly. The trial proceeded against Manuel Tan, Jr. and Hector Selmo, with Nestor Navarro as the principal witness for the prosecution.

In a decision dated March 31, 1980 on the said criminal case, the trial court convicted Tan, Jr. and Selmo of Robbery with Homicide. The dispositive portion of the decision reads: —

"WHEREFORE, and in view of the foregoing the Court finds the accused Manuel Tan, Jr. y Eblagas alias "Boy Tan" and Hector Selmo y Flores, guilty beyond reasonable doubt of the crime of "Robbery with Homicide" under Art. 294 par. 1 of the Revised Penal Code, as amended, and hereby sentences both of them to suffer the supreme penalty of death. The aforesaid accused are hereby ordered to pay jointly and severally the heirs of Mariano de Guzman, Jr. the sum of P12,000.00 and P6,577.00 and costs.

SO ORDERED." (p. 72, *Rollo*)

From the said judgment of conviction Manuel Tan, Jr. and Hector Selmo interposed the present appeal.

The facts of the case, which are anchored mainly on the testimony of the accused-turned-state witness, Nestor Navarro, are summarized as follows:

In the morning of May 13, 1977, Nestor Navarro arrived at the residence of accused Manuel Tan, Jr. situated at the back of Camp Olivas in San Fernando, Pampanga, to collect a debt from the latter. Tan, Jr. and his co-accused Selmo, a PC soldier, were then drinking, and they invited Navarro to join them. They consumed one bottle of gin. Shortly thereafter, Tan, Jr. decided to sell an empty LPG Tank and requested Selmo to look for a motor vehicle to transport the same. Not long afterwards, Selmo returned riding on a Ford Fiera jeepney driven by the victim Mariano de Guzman, Jr. (tsn, pp. 3-9, Nov. 9, 1977). After loading the LPG tank on the Ford Fiera jeepney, Tan, Jr., Selmo and Navarro, together with Guzman,

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Jr., drove to the Rusty Appliances Store located at Del Pilar Street, San Fernando, Pampanga, where they sold the tank for P50.00 (tsn, pp. 7-9, *ibid.*). Thereafter, the group boarded the same jeepney and proceeded to a restaurant in Guagua, Pampanga, where Tan, Jr., Selmo and Navarro went on a drinking spree. Guzman, Jr. did not join the trio but he waited for them inside the jeepney (tsn, pp. 9-10, *ibid.*). At about 5:00 o'clock p.m., the group, riding the same jeepney, travelled to Angeles City where they stayed in the house of a friend of Selmo for about two hours. Then, they proceeded to visit a sister of Tan, Jr. whom they did not reach at home, so, instead they went to a friend of the latter near Clark Air Field, whom they did not also reach. Thereafter, they decided to return to San Fernando, Pampanga. (tsn, pp. 11-13, *ibid.*).

On their trip to San Fernando, Pampanga, Navarro was seated beside the driver, Guzman, Jr., while Tan, Jr. and Selmo were at the back seat whispering to each other. After sometime, the group stopped along MacArthur Highway. At this juncture, Selmo directed Navarro to exchange seats with him. Subsequently, Selmo instructed Guzman, Jr. to turn right on a narrow road near the Sindalan Elementary School in San Fernando, Pampanga, and proceed to the open field. After Guzman, Jr. complied with Selmo's instruction, Tan, Jr. told Navarro, "Pare, I will do this to him" and at the same time making a thumbs down sign (tsn, pp. 14-17, *ibid.*). When the group was about 100 meters from the MacArthur Highway, Selmo ordered Guzman, Jr. to stop the jeepney because he wanted to urinate. As soon as Guzman, Jr. turned off the engine, Selmo alighted from the vehicle and handed a .45 caliber pistol to Tan, Jr., who immediately approached Guzman, Jr. and repeatedly struck his head with the pistol until he fell to the ground. Tan, Jr. ignored Guzman, Jr.'s pleas for mercy and warned Navarro not to interfere with what he was doing (tsn, pp. 18-20, *ibid.*). Shortly thereafter, Tan, Jr. ordered Navarro to assist him in bringing Guzman, Jr. to a nearby sugar cane field. On their way to the sugar field, Navarro heard Selmo shout, "Pare shoot him" and Tan, Jr. replied "talagang babarilin ko." As soon as Guzman, Jr. was laid on the ground face downward, Tan, Jr. shot him in the head with the 45 caliber pistol killing him on the spot. The trio left the victim in the sugar cane field (tsn, pp. 20-24, *ibid.*).

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With Tan, Jr. driving the Ford Fiera jeepney, the trio proceeded to the house of a cousin of Selmo in Manila where they slept that night. At 4:00 o'clock the following morning, they went to Naga City and stayed there for two days. They sold the three (3) tires of the Ford Fiera which they left behind in Naga City for P225.00 and proceeded to Pampanga. (tsn, pp. 25, 27-30, *ibid.*). They returned to the house of Tan, Jr. and Selmo separated from them. At about 4:00 o'clock to 5:00 o'clock in the morning, Tan. Jr. took Navarro to Tan, Jr.'s uncle in Masinloc, Zambales where they got one blower, two bottles of stateside liquor and one pair of stateside shoes. On their way back to San Fernando, Pampanga, aboard a passenger bus, they were apprehended aboard a big bus in connection with the offense they had committed in Masinloc.

During the hearing, Dr. Heracleo Gaddi, Municipal Health Officer of San Fernando, Pampanga who autopsied the body of Mariano de Guzman, Jr. testified on the basis of the Necropsy Report (Exhibit D) produced by him, that Mariano de Guzman, Jr. died of shock, traumatic, secondary to internal cerebral hemorrhage due to gunshot wound; that the wound in the posterior auricle region was a wound of entrance, while the wound between the vertex and the occipital lobe was the wound of exit, and both wounds were caused by a single bullet; the abrasions and contusions in the forehead of Mariano de Guzman, Jr. were probably brought about by affiliation against a rough object; the pectoral hemorrhage could have been caused by a rough object and the abrasions in the abdominal wall, right ceretal sac and shin bones were due to coming in contact with a rough object; the lacerated wound on the occipital region could be due to a blow, or a violent force, a piece of wood or iron or may be a .45 caliber gun. (p. 17, *Rollo*).

In his defense, accused, Manuel Tan, Jr. testified that he was with Hector Selmo and Nestor Navarro in the morning of May 13, 1977 drinking hard liquor. Nestor Navarro asked permission to leave to look for a jeep. Between 10:00 and 11:00 o'clock in the morning; Nestor Navarro returned with two companions riding on a Ford Fiera jeepney driven by the victim, Mariano de Guzman, Jr. Nestor Navarro invited Hector Selmo and Manuel Tan, Jr. but Selmo left them as he was to report for duty. Manuel Tan, Jr. joined Nestor Navarro up to Guagua where he partook of the drinks in the town

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proper. After drinking with Nestor Navarro, and having had too much, Manuel Tan, Jr. asked Nestor Navarro to bring him home as he was dead drunk, Nestor Navarro later heeded his request but only after being sore with him.

On the other hand, accused Hector Selmo testified that while he was with Manuel Tan, Jr. and Nestor Navarro on that morning of May 13, 1977, he stayed there only until 11:00 o'clock in the morning drinking Ginebra San Miguel because he was still on duty; and that he went home and did not go to work for he was already drunk. (p. 121, *Rollo*).

The issue in this case, therefore, rests on credibility. In convicting the appellants, the court relied heavily on the testimony of Nestor Navarro. After a careful review of the evidence on record, having in mind the seriousness of the crime committed, We find no plausible reason to hold otherwise. Nestor Navarro's categorical declarations that Hector Selmo urged Boy Tan to kill the driver, and thereafter, Manuel Tan, Jr. struck and shot the victim, Mariano de Guzman, Jr. on the head using a .45 caliber gun, and that consequently, the two took the Ford Fiera, are entitled to far more credence than the appellants' denial and non-corroborated defense of alibi.

It cannot be gainsaid that alibi is a weak defense. In the face of Nestor Navarro's positive identification of the appellants as the perpetrators of the crime, the alibi dwindles into nothingness (127 SCRA 242, *People vs. Vengco)*.

The claim of Manuel Tan, Jr. that his version, fully corroborating Hector Selmo's testimony that the latter did not join the group in going to Guagua, Pampanga, should be accorded more weight and credence than the lone testimony of Nestor Navarro implicating Nestor Selmo, is self-serving and untenable. The appellants are co-accused with a common defense of alibi. It is, therefore, to be expected that both would give corroborative testimonies to prove their claim even to the extent of distorting the truth.

Even granting that Navarro's testimony was not corroborated, as contended, the same is still sufficient to convict his co-accused, if and when the court gives it full faith. In the determination of the

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values and credibility of evidence, witnesses are to be weighed and not numbered. (*People vs. Argana*, 10 SCRA 311) The rule is that the testimony of only one witness, if credible and positive, is sufficient. Navarro's testimony, however, is not wanting in corroboration. The physical and medical findings on the body of the victim confirm Navarro's testimony that the victim was struck with a gun and was shot in the head. The stolen jeep was recovered in Legaspi City, the three tires missing, by its owner Angelo David of San Fernando, Pampanga with the assistance of the Police Force of San Fernando, Pampanga (tsn, pp. 2-10).

Anent appellants' insistence that Navarro's testimony failed to show the motive of the killing, suffice it to state that proof of motive is unessential for there is no doubt as to the identities of the perpetrators of the crime. (*People vs. Madera*, 57 SCRA 349; *People vs. Guba*, 42 SCRA 109) Thus, on Cross examination, Navarro testified that:

"COURT

Does the court understand from you that at that time of the night you were only four, the two accused, you and the fallen driver?

A. Yes, sir"

x x x x x x x x x (p. 60 tsn)

"Q You actually saw Tan loading and/or cocking the gun?

A I was very near, sir, when Hector Selmo told Boy Tan to shoot the driver and Boy Tan answered, "I will really shoot him" and then I saw Boy Tan do this (witness demonstrating with his two hands, with one hand stationary and the other pulling it back.

Q How far were you from him, referring to Tan?

A Just this distance (witness indicating a distance of 1 meter more or less).

x x x x x x x x x (p. 58, TSN)

"ATTY. Ocampo

Q How many times did Boy Tan shoot the fallen driver?

A Once only.

Q Whereat or towards what portion of his body?

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A When I saw him he shot him in the head, the gun was pointed towards the head of the victim.

Q Are you sure about that?

A Yes, sir.

Q Where was Hector Selmo when according to you he told Boy Tan to shoot the driver?

A He was left near the Ford Fiera and he said to Boy Tan "Pare, shoot him," and Boy Tan answered, "Talagang barilan ke," "I will really shoot him."

x x x x x x x x x (p. 61, tsn)

"Q How far were you from Selmo at the time he told Tan, "Pare, barilan me"?

A As I have already said, from here where I am sitting up to that jail guard there, about a distance of 8 meters."

x x x x x x x x x (p. 62, tsn)

The appellants warn that Navarro's testimony comes from a polluted source for he was originally a co-accused in the information. We find Navarro's testimony trustworthy and credible for his narration of the sequence of events that transpired and the behavior of the appellants from the time they returned to San Fernando from Angeles City is natural, probable and has the earmarks of truth. Navarro could not have narrated such facts in such detail had they not actually occurred.

It is well-settled in our jurisdiction that conclusions of the trial judge, regarding the credibility of witnesses, command great respect and consideration, specially when, as in this particular case, they are supported by the evidence on record.

**WHEREFORE**, the judgment of conviction is hereby AFFIRMED with the penalty being reduced to *reclusion perpetua*, but the indemnity for the heirs should be increased from P12,000 to P30,000.

**SO ORDERED.**

*Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz,* and *Feliciano, JJ.*, concur.