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SECOND DIVISION

[G.R. No. 68805. July 9, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN CRUZ,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY IN INFORMING OTHERS OF WHAT THEY KNOW ABOUT A CRIMINAL OFFENSES.**— It is settled that delay of witnesses in informing others of what they know about a criminal offense will not affect their credibility, where the delay is satisfactorily explained. (*People vs. Salcedo*, 122 SCRA 54) The natural reticence of witnesses so as not to get involved in criminal cases is of judicial notice. (*People vs. Realon*, 9 SCRA 427).

2. **ID.; ID.; ID.; NOT AFFECTED BY RELATIONSHIP WITH THE VICTIM.**— Nor is the alleged relationship of Oscar Rustia to the victim Salvador de Castro of such a nature as to vitiate the credibility of said witness. For mere relationship is not a sufficient ground to disqualify a witness and render his testimony incredible. (*People vs. Maruhom*, 132 SCRA 123) Moreover, there is no evidence on record showing that the victim Salvador de Castro was actually related to Oscar Rustia. What Oscar Rustia testified on cross-examination was that he heard that the victim is an illegitimate son of his brother but he could not say that he was really a relative because he did not know.

3. **ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT, UPHELD ON APPEAL.**— Where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, unless it has plainly overlooked certain facts of substance and value which if considered might affect the result of the case. Herein appellant failed to demonstrate that his case falls under the exception which will justify Us in overturning the findings of fact by the trial court. (*People vs. Canamo*, 138 SCRA 141)

4. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.**— The "alibi" interposed by appellant is

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far from convincing. It is uncontroverted that the shooting took place before the very eyes of Oscar Rustia. The testimony of Oscar Rustia was corroborated by the jeepney driver Domingo Cruz. Both these witnesses testified in a straightforward manner inducing belief in the veracity of their testimonies. The rule is well settled that alibi cannot prevail over positive identification made by credible witnesses. (*People vs. Plaza*, 140 SCRA 277; *People vs. Pielago*, 140 SCRA 418; *People vs. Canamo*, 138 SCRA 141; *People vs. Sinaw-ay*, 138 SCRA 221).

5. **ID.; ID.; ID.; REQUISITES FOR THE DEFENSE TO PROSPER.**— For alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. The accused must show that he was at some other place for such period of time as to preclude or render impossible his presence at the place where the crime was committed at the time of its commission. (*People vs. Lorenzo*, 138 SCRA 17; *People vs. Mora*, 138 SCRA 474). Tested against his yardstick, appellant's alibi appears inherently weak. Considering modern means of transportation, the distance of about thirty (30) kilometers, between the place where the appellant claimed to be and where the crime was committed is such that it does not rule out the possibility of the appellant being at the place of the crime when it was committed.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Alvin C. Balagtas for accused-appellant.

D E C I S I O N

PARAS, *J.*:

In Criminal Case No. 8403 (77) of the Regional Trial Court, Branch CXXII - Caloocan City, Benjamin Cruz alias "Amen" was charged with Murder alleged to have been committed in the following manner:

"That on or about the 30th day of June, 1966, in the Municipality of Navotas, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the said accused with treachery and evident

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premeditation, and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and wound one SALVADOR DE CASTRO by then and there shooting him with a pistol, to wit: an automatic pistol Caliber .25 and as a result, thereof, said SALVADOR DE CASTRO sustained a wound at the nape which caused his death."

After trial, the court *a quo* rendered judgment, the dispositive portion of which reads as follows —

"WHEREFORE, the Court finds the accused BENJAMIN CRUZ GUILTY beyond reasonable doubt as principal for the crime of Murder, qualified with treachery, defined and penalized under Article 248 of the Revised Penal Code.

"There being no modifying circumstance, he is hereby sentenced to *RECLUSION PERPETUA* and to indemnify the heirs of the deceased in the sum of Twelve Thousand Pesos (P12,000.00) and to pay the costs." (Decision, p. 422, Records)

From the aforesaid judgment of conviction, accused Benjamin Cruz interposed the present appeal to this Court upon the following assigned errors:

"The Lower Court erred in accepting evidence of the prosecution as having established the guilt of the accused-appellant, Benjamin Cruz."

"The Lower Court erred in not resolving appellant's evidence upon a theory of innocence." (pp. 2, 15, Appellant's Brief)

We have examined the record of the case and We find both assigned errors unmeritorious.

The People's evidence, culled from the composite testimonies of eyewitnesses Oscar Rustia, a passenger, and Domingo Cruz, the jeepney driver involved in this case, together with the documentary evidence presented, particularly the Necropsy report and several photographs, is correctly summarized in the assailed decision as follows:

"x x x at about 7:00 o'clock in the in morning of June 30, 1966, Oscar Rustia, a resident of 170 Leano St., Malabon, Rizal, now Metro

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Manila, boarded a passenger jeepney headed for Navotas where he was then going (3-5 tsn, 22 May 78).

"While the jeepney which was then being driven by Domingo Cruz was nearing the front of the Church at Malabon, a person wearing a hat boarded the jeepney and seated himself at the back of the driver. The person pulled a gun from his waist, which he concealed in his jacket. When the jeep was near Quintos Street, he shot the man seated beside the driver. He then told the driver to go ahead and fled (7-8,11, Tsn, *ibid*).

"Oscar Rustia x x x was very much afraid and tried to look at the victim and recognized him as coming from Taniong, Malabon, Rizal. He identified the victim x x x known as "Dando" Castro whose picture is shown in Exhibit B (9, Tsn, *ibid.*). He likewise identified the gunman as the accused known as 'Amen', a resident of Wawa, Navotas, who was previously known to him in Navotas and is very popular in killing (10, Tsn. *ibid.*). He then went home afraid that he will be involved in the incident (p. 8, Tsn, *ibid.*).

"Oscar Rustia informed the police, particularly Lt. Benny Zamora of Navotas about what he saw but they did not want him to testify because they were afraid of the accused. According to the policemen, the brother did not want him to give any statement because the man was not yet apprehended. He was not made to sign a written statement because of fear that the accused might kill the police investigator. Lt. Benny Zamora (pp. 18-19, Tsn, *ibid.*). On learning of the name Amen, Lt. Zamora advised him not to mention his (Oscar Rustia's) name otherwise he might be involved (p. 20, Tsn, *ibid.*).

"Domingo Cruz, the driver of the jeepney, testified on September 2, 1982, he was driving his jeepney at about 7:00 o'clock in the morning of June 30, 1966, when he heard a shot and his passengers suddenly went down the jeepney. He looked around to see if any tire was blasted and learned that the passenger beside him who slumped on his back has been shot. He brought the passenger to the Municipal Hall where the body was taken by an ambulance (2-4, Tsn, 2 Sept. 82).

"Domingo Cruz further testified that he does not know the man was shot or who shot him. He, however, identified the statement given by him to the police immediately after the incident or more specifically at 9:20 a.m. of June 30, 1966 wherein he gave a description of the man who fired the shot and other circumstances surrounding the shooting (Exh. C).

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"The case was investigated by Police Officer Reynaldo Tillao of Navotas Police Force, who received a report of the shooting incident. He immediately proceeded to the place of the incident at Quintos Street, Navotas, where he found an empty shell (Exh. D-1). He later on came to know that the assailant was the accused Benjamin Cruz (pp. 7-10, Tsn, 2 Sept. 82).

"The cadaver of the deceased was autopsied at the Funeraria Popular the same morning of June 30, 1966 at 11:30 o'clock by Dr. Dario C. Nalagan of the National Bureau of Investigation, who made the following findings, to wit:

"Cyanosis of lips and nailbeds.

"Gunshot wound *ENTRANCE* head right parietal region 4.5 cms. above and 5.5 cms. posterior to right auditory meaturs, 8.5 cms. from posterior median line, 4.0 cms. above external occipital protaberance, 0.6 x 0.7 cms. surrounded by a contusion collar 0.3 cms. with an area of tatooing 2.0 x 1.0 cms. Directed from right to left forwards and almost horizontally, involving the scalp and underlying tissues producing a punch hole fracture of the right parietal and left parietal lobe and left frontal lobe fracturing the left frontal bone comminutedly 1.6 x 1.0 cms. where a metal jacketed deformed bullet was recovered at the left frontal muscle 4.0 cms. above the 7.5 cms. anterior to the left external auditory meatus, 6.0 cms. from anterior median line.

"Heart and other internal organs congested."

"Hematoma scalp right tempero-parietal-occipital region 4.5 x 3.0 cms."

"Hermorrhage subdural and subdural choidal extensive."

"Stomach half filled with partly undigested food.(Exhibit "A")

"The cause of death is: Gunshot wound of the head (Exh. A-2).

When this case was called for hearing, Dr. Nalagan had already died. It was Dr. Maximo Reyes of the NBI who identified and testified on the Necropsy Report of Dr. Nalagan, including the photographs of the deceased (Exhs. B, B-1, to B-3). The photograph, Exhibit "B-3"), shows the point of entrance on the right side of the back of the head.

"A complaint for murder dated July 4, 1966 was filed against the accused on July 12, 1966 with the Municipal Court of Navotas, Rizal (Folio 5).

"On November 22, 1966, the Municipal Court of Navotas issued an order for an alias warrant of arrest to seek the cooperation of

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other police agencies for the early apprehension of the accused, 'it appearing that the records of the case that the warrant of arrest issued by this Court for the apprehension of the accused had not been served notwithstanding the lapse of time.' (Folio 26, 27).

"It was only on October 1976 that the accused was arrested (Folio 26, 30). He waived his right to the second stage of the preliminary investigation and the case was remanded to this Court (Folio 49-50)."

(Decision, pp. 414-416, Records)

In an attempt to discredit the testimony of the witnesses for the prosecution, more specifically that of Oscar Rustia, counsel for the appellant pointed to some inconsistencies and contradictions in his testimony which he believes militate strongly against the credibility of said witness. The said contradictions and inconsistencies however, refer merely to minor details (e.g. which do not impair or destroy the probative values of his testimony). (*People vs. Pielago*, 140 SCRA 418; *People vs. Naz*, 138 SCRA 420).

Counsel for appellant further assails the credibility of the testimony of Oscar Rustia on the following grounds — Oscar Rustia's relationship with the deceased Salvador de Castro who allegedly is the illegitimate son of Oscar's brother' his having testified only after twelve (12) years after the occurrence of the shooting incident; his alleged proposal to the appellant that he (Rustia) and the widow of the deceased would no longer testify against him in consideration of the amount of P5,000.00; and finally the discrepancy involving the trajectory of the bullet in relation to the sitting position of the gunman and the victim just before the shooting.

An examination of the record shows that the trial court had thoroughly passed upon the foregoing allegations of the appellant and correctly ruled that they are untenable. Thus, on the delay of the testimony of witness Oscar Rustia, the trial court correctly observed:

"It may be however noted that two (2) weeks after the killing of the deceased on June 30, 1966, the accused was already named as the killer of the deceased in a complaint for Murder filed against

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him before the Municipal Court of Navotas. The Municipal Court forthwith issued a warrant for the arrest of the accused but notwithstanding the issuance of an alias warrant of arrest and the Court's appeal for cooperation of other police agencies, the accused could not be arrested.

"It was only on October 1976, or more than ten years later that the accused was finally arrested and it was only on February 7, 1977 that an information for Murder was filed against the accused. *This explains why it was only in 1978 or twelve years later that Oscar Rustia was called on the witness stand to testify.* Oscar Rustia declared that while he was still afraid to testify against the accused, he had informed Lt. Benny Zamora of the Navotas Police of what he saw but the latter upon learning of the name 'Amen', advised him not to give a written statement because he might be involved, and for fear that the accused might kill Lt. Benny Zamora.

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"In the present case, there was an early identification of the accused as the killer but the witness was warned against making a written statement for fear of the accused who, according to Oscar Rustia, is very popular in Navotas for killing. In fact, it may be observed that although the warrant for the arrest of the accused has been issued as early as 1966, he was not arrested until after ten years, later. *There was evident justification for the absence of any written statement and delay in the testimony* of the witness.

"The defense tried to discredit the explanation of Oscar Rustia by pointing out that Lt. Juvenal Zamora died on November 16, 1971 (Exh. 1, 1-a). *This is, however, of no moment since there is no pretense by Oscar Rustia that his revelation was done after the death of Lt. Zamora but appears to have been made immediately after the shooting.*" (italics supplied)

(Decision, pp. 421-422, Records)

It is settled that delay of witnesses in informing others of what they know about a criminal offense will not affect their credibility, where the delay is satisfactorily explained. (*People vs. Salcedo*, 122 SCRA 54). The natural reticence of witnesses so as not to get involved in criminal cases is of judicial notice. (*People vs. Realon*, 9 SCRA 427).

Nor is the alleged relationship of Oscar Rustia to the victim Salvador de Castro of such a nature as to vitiate the credibility

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of said witness. For mere relationship is not a sufficient ground to disqualify a witness and render his testimony incredible. (*People vs. Maruhom*, 132 SCRA 123). Moreover, there is no evidence on record showing that the victim Salvador de Castro was actually related to Oscar Rustia. What Oscar Rustia testified on cross-examination was that he heard that the victim is an illegitimate son of his brother but he could not say that he was really a relative because he did not know. (pp. 15-17, Tsn, May 22, 1978).

Anent the alleged discrepancy involving the trajectory of the bullet in relation to the sitting position of the gunman and the victim just before the shot rang out inside the jeepney, the evidence on record shows that the road was "bumpy" as in fact the heads of the passengers "were moving back and forth." It was possible that at the moment when the muzzle of the gun touched the back part of his head, the victim turned his face towards the right instinctively, which victim's movement and the jeepney's bumpy movement likewise caused the gunman to align his gun with the right side of victim's head before firing. (See Decision, p. 421, Records).

On the alleged offer of Oscar Rustia to keep his mouth shut for the sum of P5,000.00, suffice it to state that appellant's testimony in this regard is self-serving and uncorroborated.

Indeed, the trial court cannot be faulted in relying very heavily on the testimony of Oscar Rustia whose narration of the shooting incident and whose identification of the appellant as the gunman or killer of the deceased were corroborated in their essential parts by the testimony of jeepney driver Domingo Cruz who had immediately given a written statement to the police investigator on the same day of the shooting incident (Exh. "C") and the truthful entries on the Necropsy Report (Exh. "A") as well as certain photographs (Exh. "B", "B-1" to "B-3"). That the eyewitness Oscar Rustia cannot be mistaken as to his identification of the accused-appellant as the killer is explained by the trial court in this wise —

"Oscar Rustia, a resident of 170 Leano Street, Malabon, Rizal, who claimed that he was a passenger of the jeepney at the time of

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the shooting positively pointed to the accused who is previously known to him as the gunman. The condition for clear observation and positive identification were favorable. It was seven o'clock in the morning and there were few passengers in the jeepney. Oscar Rustia was inside the same jeepney with the accused. He saw the accused when the latter boarded the jeepney and seated himself at the back of the driver. The accused was previously known to him as a known killer in Navotas. Oscar Rustia likewise described how the accused pulled a gun from his waist which the latter concealed in his jacket and how the accused shot the deceased when the jeepney was near Quintos Street.

"Under the circumstances, he could not possibly commit a mistake in identifying the accused as the assailant." (Decision, pp. 420-421, Records)

Appellant's defense consisted mainly of an alibi and mere denial. He claimed that he was nowhere at the scene of the incident on June 30, 1966, as he was then in Bambang, Bulacan working as a banca maker.

The "alibi" interposed by appellant is far from convincing. It is uncontroverted that the shooting took place before the very eyes of Oscar Rustia. The testimony of Oscar Rustia was corroborated by the jeepney driver Domingo Cruz. Both these witnesses testified in a straightforward manner inducing belief in the veracity of their testimonies. The rule is well settled that alibi cannot prevail over positive identification made by credible witnesses. (*People vs. Plaza*, 140 SCRA 277; *People vs. Pielago*, 140 SCRA 418; *People vs. Canamo*, 138 SCRA 141; *People vs. Sinaw-ay*, 138 SCRA 221).

Moreover, for alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. The accused must show that he was at some other place for such period of time as to preclude or render impossible his presence at the place where the crime was committed at the time of its commission. (*People vs. Lorenzo*, 138 SCRA 17; *People vs. Mora*, 138 SCRA 474). Tested against his yardstick, appellant's alibi appears inherently weak. Considering modern means of transportation, the distance of about thirty (30) kilometers, between the place where the appellant claimed to be and where the crime was committed is

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such that it does not rule out the possibility of the appellant being at the place of the crime when it was committed.

Finally, where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, unless it has plainly overlooked certain facts of substance and value which if considered might affect the result of the case. Herein appellant failed to demonstrate that his case falls under the exception which will justify Us in overturning the findings of fact by the trial court. (*People vs. Canamo*, 138 SCRA 141).

In convicting the accused, the trial court ordered him to indemnify the heirs of the deceased in the amount of P12,000.00. This should now be increased to P30,000.00. (*People vs. Mananquil*, 132 SCRA 196.)

WHEREFORE, except as thus modified, the judgment appealed from is hereby AFFIRMED with costs against appellant.

SO ORDERED.

Feria, Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. L-36958. July 10, 1986]

MARIANO ZABAT, JR., *petitioner, vs.* **THE COURT OF APPEALS, and MANOTOK REALTY, INC.**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY DISMISSAL OF COMPLAINT, NOT A DENIAL OF DUE PROCESS WHERE PETITIONER SLEPT ON HIS RIGHTS.— The plaintiff now comes to us as petitioner and