PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN B. TAWAKIM, ACCUSED-APPELLANT,

Ponente: INTING, J.

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INTING, J.:

This is an appeal from the August 15, 2005 Decision[1] of the Regional Trial Court Branch 13, Cotabato City in Criminal Case No. 2622 for Murder, the dispositive portion of which reads:

> "WHEREFORE, upon the foregoing consideration, the Court hereby finds the accused Allan B. Tawakim guilty beyond reasonable doubt of the crime of Murder.
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> Accordingly, with the application of Art. 248 (1) and (5) of the Revised Penal Code, and appreciating the existence of Treachery and Evident Premeditation, with no mitigating circumstance, the Court hereby sentenced accused Allan Tawakim to suffer the penalty of reclusion perpetua in its Maximum to death and to indemnify the heirs of victim the amount of Fifty Thousand Pesos (P50,000.00) for the death of Mohaliden U. Dimaporo and Forty Four Thousand Five Hundred Eighty Three Pesos and Forty Centavos (44,583.40) Philippine Currency for damages.
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> The accused shall be entitled to one hundred (100%) percent reduction of his sentence for the number of years he had served in jail during his preventive detention.
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> SO ORDERED."

Accused Allan Tawakim was originally charged in an Information dated December 13, 1999[2] later amended to include another unidentified suspect. The May 29, 2000 Amended Information[3] partly reads:

> "That on or about December 8, 1999, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with a Batangas knife about ten (10) inches long, including the handle, with intent to kill, did then and there wil[l]fully, unlawfully and feloniously attack and stab Mohaliden Dimaporo at his left neck, inflicting upon him stab wound (L) neck, with treachery and known premeditation, and as a result thereof said Mohaliden Dimaporo died on December 10, 1999."

Tawakim, assisted by counsel, was arraigned on June 1, 2000. He pleaded not guilty to the crime charged.[4] Per records, Tawakim is detained at the National Bilibid Prisons in Muntinlupa after he was transferred from the Cotabato City Reformatory Center on November 21, 2005.[5] However, per May 2, 2012 Resolution of this Court, accused was granted outside hospitalization for a medical treatment.[6]

The facts of the case are as follows:

Evangeline Uy testified that at about 8:20 p.m on December 8, 1999, she was with her niece Jean Arap and nephew Mohaliden Dimaporo drinking soda at the C&D Resto. When they were about to leave, Mohaliden excused himself to go to the bathroom. Evangeline and Jean waited at their table. After a while, Evangeline went to the bathroom to wash her hands. Before she could get to the bathroom, Evangeline saw Mohaliden come out of

the men's toilet wounded and covered with blood. She asked Mohaliden what happened but the latter merely replied that they have to go as he has a wound on his neck. Evangeline then followed Mohaliden when she noticed a man chasing them. When they reached the main door the man and his companion went to a different direction after having noticed policemen standing by the restaurant entrance. Evangeline asked for assistance while Jean directed the policemen to the men whom they suspected as the assailants. The policemen caught one of them who was later identified as Allan Tawakim, the uncle of a woman whom Mohaliden impregnated. Meanwhile, Mohaliden was boarded in a tricycle and brought to the Cotabato Medical Hospital.[7]

On cross-examination, Evangeline attested that while she was still on her way to the bathroom, about four (4) to five (5) steps away from the men's toilet, she saw Tawakim stab Mohaliden. At that time, Mohaliden's back was towards Tawakin; and the latter, using his right hand, stabbed Mohliden on the left side of his neck. Mohaliden then ran towards her. Evangeline saw Mohaliden's four (4) other wounds when they were already at the hospital. Evangeline admitted not having mentioned Tawakim in her affidavit but reasons out that she was just bothered at that time. She did not expect the accused could do that to Mohaliden especially because they were neighbors. However, she maintains that when her statement was taken, she indicated Tawakim but it was not written in her affidavit.[8]

Evangeline's testimony was corroborated by Jean Arap, who deposed that after Evangeline went to the bathroom, she also followed. It was at that time when she saw Evangeline and Mohaliden being chased by Tawakim with a knife. At that moment, Mohaliden was already holding his neck. Tawakim had a companion but Jean could not identify him because of the commotion. When they got to the entrance, Jean asked for police assistance and pointed out Tawakim as the assailant. She could not recall any altercation between the accused and Mohaliden but she knew that the latter got Tawakim's niece pregnant.[9]

On her cross-examination, Jean averred that before the incident, she already noticed Tawakim in the restaurant seated near the toilet. She did not actually see him stab Mohaliden.[10]

PO1 Ronald Dumaldal was also presented for the prosecution. He testified that he was at the vicinity of the restaurant at about 8:45 pm together with PO2 Manuel Davila. They were taking a break from patrolling when they noticed an approaching teenager whom they later came to know as Mohaliden. He was followed by three persons - two women and one man. Mohaliden tried to speak but to no avail due to his neck wounds. Mohaliden's female companions informed them of the incident and pointed at Tawakim as the suspect. The authorities immediately apprehended Tawakim and turned him over to their Patrol Team Leader SPO4 Siang, who conducted the body search on the accused at the police station where a ten-inch balisong knife, still covered with blood, was recovered from the accused's right back pocket.[11] PO2 Manuel Davila also saw the bloodied knife taken from the accused.[12] However, the knife was not presented in court which was already submitted to the prosecutor's office when the case was filed.

Dr. Faisal Samanodi was the hospital consultant who issued Mohaliden's medical certificate. Per doctor's findings, the victim had stab wounds on his left neck penetrating and lacerating external through and through the esophagus to the right internal jugular vein which carries blood from any organ towards the heart. The incise wounds were about 2-3 cm in length and about 6-8 cm in depth and was possibly inflicted by a double edged knife. Aside from the two (2) major inflicted wounds on the victim, he also had smaller extremity wounds on his left lung and abdomen.[13]

On the other hand, the defense presented the accused Allan Tawakim who denies the allegations against him. According to him, there was already a commotion when he arrived at the C&D Resto. He saw people rush outside the restaurant and followed them without knowing what was going on. Suddenly, a man in civilian clothing held

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and slapped him. He felt scared and dizzy so that he sat down. He was then detained and that was only the time he knew of the charges against him. He refutes owning the knife recovered by the authorities. He admits knowing Mohaliden as the boyfriend who impregnated her niece; but he did not have any ill feelings towards him and that any misunderstanding had already been settled. He could not also think of any reason why the police would implicate him in the crime.[14]

The RTC rendered the assailed decision finding that the stabbing of the victim by Tawakim was convincingly established beyond reasonable doubt; that in the crime scene, two witnesses saw Tawakim chasing the victim with a knife, which was later recovered from him with blood stains; that the failure to present the knife was not fatal to the case because the witnesses' positive identification of the accused sufficed; that there was the presence of evident premeditation considering that the accused chose to kill the victim in a comfort room with a limited space, with only one door for exit and while the victim was urinating with his back facing the accused ensuring he would not see the attack; that the strike was sudden and unexpected and the victim was not in a position to defend himself; that the accused intentionally chose the comfort room to ensure the execution of his criminal design without risk to himself; that the accused had a grudge on the victim who impregnated the former's niece and has clung to his plan of retaliation despite sufficient time that has lapsed for the accused to change his mind, hence, he is not entitled to any mitigating circumstance for his stabbing was not from lawful sentiments but from lawlessness and revenge; and that the accused's denial cannot stand against the positive testimonies of the witnesses who did not have anything against the accused.

Unyielding, accused appeals to Us assigning as lone error his conviction by the court a quo notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt. The accused-appellant asseverates that Evangeline's testimony lacks credibility because in her affidavit, she failed to mention that she saw the stabbing but in her later testimonies, she claimed to have seen the stabbing; that she did not mention the accused-appellant's name in the affidavit considering that they knew each other; that the witnesses' testimonies were inconsistent as to who sought help and where the accused-appellant was caught; and that treachery and evident premeditation were not established.

Our Ruling

We uphold the accused-appellant's conviction.

The failure of Evangeline to mention all the details of the stabbing incident or to name the accused-appellant in her affidavit will not necessarily affect the credibility of her testimony. It bears stressing that the court a quo's finding of the facts was not solely based on her testimony but also on the depositions of the other witnesses who corroborated the events and identified the accused-appellant as the assailant. The case of Decasa v. CA,[15] is enlightening on this point and we quote pertinent portions thereof, to wit:

> "Petitioner argues that the RTC and the Court of Appeals committed grave abuse of discretion in giving credence to the testimony of eyewitness Rogelio since there were grave and irreconcilable inconsistencies in the latter's affidavit and court testimony. According to petitioner, when Rogelio executed his affidavit and was subjected to a preliminary examination two weeks after the incident, he never mentioned therein that he actually saw the hacking of Teodoro by petitioner. It was only during the trial on the merits of the instant case that Rogelio for the first time testified that he personally witnessed the hacking of Teodoro by petitioner.xxx
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> The contentions are devoid of merit.
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> When Rogelio was asked during the trial why it is not reflected in his affidavit that he actually saw petitioner hack Teodoro, he explained that he believed that everything he said was already included in his affidavit, including that part wherein he actually saw petitioner hack Teodoro, viz:

> He [Rogelio] was investigated by the police anent this case at the Municipal Hall of Bilar where he also executed an affidavit (Exhibit "1" for the defense). It was Fred Pangan, Acting Chief of Police, who took his affidavit, Fred Pangan asked him questions relative to the incident, and he told him everything that he saw. However, when he was asked to explain why it is not reflected in his affidavit that he actually saw the accused hack Teodoro Luzano, he answered that he believed that everything he said were already included in his affidavit, including that part wherein he actually saw Nestor hack Teodoro.
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> As can be gleaned from the foregoing, it was Rogelio's honest belief that he was able to state in his affidavit the fact that he saw petitioner hack Teodoro. Rogelio's elucidation is understandable and does not affect his credibility since witnesses cannot be expected to give a flawless testimony all the time. This is even more true if they are called to testify on details of a harrowing and frightening event which unfolded before their eyes. What is decisive and significant is that Rogelio saw the petitioner hack Teodoro and that he testified on such fact during the trial.
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> xxx
> It should also be stressed that the testimony of Rogelio is consistent with the findings of Dr. Tumanda. Rogelio narrated that petitioner hacked Teodoro on the head with a bolo-like instrument. Dr. Tumanda declared that the multiple injuries sustained by Teodoro on the head were caused by a sharp-edged and pointed instrument like a bolo. This circumstance bolsters the credibility of Rogelio's testimony."

As in the instant case, Evangeline was able to explain the omission in her affidavit. She aptly recalled naming the accused-appellant as the one who stabbed Mohaliden and she thought that such detail was already included in her affidavit. She should not be blamed for such lapse nor be faulted if her affidavit did not contain the specifics of the event. As settled, the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify a reversal of judgment.[16] Such discrepancies do not necessarily discredit the witness since ex-parte affidavits are almost always incomplete.[17] A sworn statement or an affidavit does purport to contain a complete compendium of the details of the event narrated by the affiant.[18] Sworn statements taken ex parte are generally considered to be inferior to the testimony given in open court.[19] What is of utmost importance is that she was able to testify on what she saw in open court and her story was corroborated not only by other witnesses but by the evidence as well. Evangeline testified that she saw the accused-appellant stab the victim on the latter's left neck with a knife. This allegation was corroborated by the medical findings on the victim. Jean also saw the accused-appellant chase the victim with a knife which the police authorities later recovered from the accused-appellant. All these overshadow the omissions in Evangeline's affidavit. The circumstantial proofs lead to a clear conclusion that herein accused-appellant is the culprit.

Further, it is of no moment if the weapon used in the commission of the crime was not presented in open court. In People v. Delpino,[20] the Supreme Court reiterates that the failure to present the murder weapon would not exculpate the accused-appellant from criminal liability. The presentation and identification of the weapon used are not indispensable to prove the guilt of the accused positively identified by a credible witness.[21] Analogously, in the case at bench, even if the knife used to stab the victim was not proffered in open court, it will not absolve the accused-appellant's culpability because he was positively identified by several witnesses as the offender.

Article 248 of the Revised Penal Code states:

> Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
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> - With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

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> - With evident premeditation.

We find both circumstances wanting in the case at bench to qualify the crime to murder.

A judicious perusal of the Information filed against the accused-appellant shows that the prosecution failed to properly set forth therein how treachery and evident premeditation were carried out by the accused-appellant in his attack on the victim. In the case of People v. Valdez,[22] the Supreme Court explains:

> "Treachery is the employment of means, methods, or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make. It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the State to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.
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> It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information." (Underscoring ours)

Quoting People v. Dimaano, the Supreme Court went on to hold:

> "For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense." (Emphasis ours)

The two elements to establish treachery are: (a) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself; and (b) the means, method and manner of execution were deliberately and consciously adopted by the offender.[23] The acts constituting the afore-cited elements were not alleged in the Information. The fact that the accused-appellant stabbed the victim on the neck does not by itself establish that there was treachery. What makes an action treacherous is the employment of the means to ensure safety of the perpetrator from the retaliation of the victim and the conscious and deliberate use of the assailant of the means, method and manner of execution. All these are absent in the Information as the prosecution failed to ascertain how the act of stabbing ensured the safety of the accused-appellant from the victim’s defense nor did it show how the accused-appellant deliberately and consciously adopted such means, method and manner of execution thus, making the killing treacherous. The use

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of the word "treachery" to describe the act is of no moment for, standing alone, it is nothing but a conclusion of law and not an averment of fact.[24]

On the other hand, to warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender was determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[25] Not only did the Information lack such details but the evidence on record is also short of proving them. In appreciating the aggravating circumstance of evident premeditation, it is indispensable that the fact of planning the crime be established.[26] It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[27] Accordingly, when there is no evidence showing how and when the accused planned the killing and how much time elapsed before it was carried out, evident premeditation cannot prosper.[28]

Consequently, We cannot appreciate the circumstances of treachery and evident premeditation for the acts constituting them were not clearly stated in the Information lest the accused-appellant will be deprived of his right to be completely informed of the crime charged against him.

Considering that no qualifying circumstance is established in the instant case, the accused-appellant is thus, guilty only of the crime of homicide under Article 249 of the Revised Penal Code which provides that any person who not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal. Absent any mitigating or aggravating circumstances, the penalty shall be imposed in its medium period of 14 years, 8 months and 1 day to 17 years and 4 months. However, under the Indeterminate Sentence Law, the minimum shall be taken from prision mayor and the maximum from the period of reclusion temporal.[29] Hence, this Court imposes the indeterminate sentence of 10 years of prision mayor as minimum to 17 years of reclusion temporal as maximum.

WHEREFORE, the August 15, 2005 Decision of the Regional Trial Court Branch 13, Cotabato City in Criminal Case No. 2622 is hereby MODIFIED. The accused-appellant Allan Tawakim is found GUILTY of the crime of Homicide and is sentenced to suffer the indeterminate sentence of 10 years of prision mayor as minimum to 17 years of reclusion temporal as maximum. He is directed to pay the heirs of the victim Mohaliden Dimaporo moral damages of P50,000.00, actual damages of P44,583.40 and civil indemnity of P50,000.00. Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

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[1] Rollo, pp. 68-80.

[2] Records, p. 1.

[3] Records, p. 63.

[4] Records, p. 66.

[5] Rollo, p. 22.

[6] Ibid, pp. 153-155.

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[7] Records, December 9, 1999, p. 5.

[8] TSN, May 3, 2001, pp. 4-5, 8-10 and 19.

[9] TSN, August 7, 2001, pp. 8-11, 20-21.

[10] Ibid, August 13, 2001, pp. 5-6 and 9.

[11] Supra, June 26, 2002, pp. 5-11, 13-14 and 16.

[12] Ibid, p. 27.

[13] TSN, January 9, 2003, pp. 7, 9-10, 13-15.

[14] TSN, March 2, 2005, pp. 4-6, 11-13.

[15] G.R. No. 172184, July 20, 2007.

[16] Supra.

[17] Supra.

[18] Supra.

[19] Supra.

[20] G.R. No. 171453, June 18, 2009.

[21] Supra.

[22] G.R. No. 174602, January 18, 2012.

[23] People v. Gonzales, G.R. No. 195534, June 13, 2012.

[24] Supra.

[25] People v. Delpino, G.R. No. 171453, June 18, 2009.

[26] Supra.

[27] Supra.

[28] Supra.

[29] Supra.

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