

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO FLAST QUINDALA Y DE LOS NIEVES, ACCUSED-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an Appeal[1] assailing the Decision in Crim. Case No. CBU-67316 of the Regional Trial Court, Branch 24, of Cebu City (RTC-Branch 24, Cebu City) dated October 5, 2009,[2] the fallo of which states that:

WHEREFORE, the prosecution having established the guilt of accused beyond reasonable doubt of the crime charged, [the Court] hereby sentences [the] accused to suffer imprisonment of Reclusion Perpetua and the accessory [penalties] inherent in law. He is also adjudged liable to pay the following measures of damages:

- Fifty Thousand Pesos (P50,000.00) for the life of the person snuffed;
- Fifty Thousand Pesos (P50,000.00) as moral damages; and,
- Twenty-Five Thousand Pesos (P25,000.00) in reimbursement of the burial and funeral expenses.

SO ORDERED.

The antecedent facts are as follows:

On September 22, 2003, Narciso Cellona was found dead at the fiesta carnival at Poblacion Pardo, Cebu City. Accused-Appellant Quindala was pointed as the perpetrator and was subsequently charged for murder.

During trial, the prosecution presented the following witnesses: eyewitness Leo Navarro, Police Inspector (P/Insp) Jimmy L. Aguisanda and then barangay tanod Miller Abellanosa.

Navarro testified that on September 22, 2003, at around 1:55 o'clock in the morning, he was at a carnival for the fiesta celebration of Poblacion Pardo, Cebu City. He was participating in a parlor game when he suddenly noticed a man wearing a blue and white polo shirt[3] came from behind another man and stabbed the latter on the chest near the breast.[4] Navarro was around a meter away[5] from the two and saw clearly the stabbing motion. The victim did not notice that the man came from behind.[6]

The victim was able to run away but the other man chased him. Cellona was later found lifeless under a table at the carnival. The man who stabbed him was seen casually walking away.

After the commotion, a man was accosted by the barangay tanod. Since he did not want to be involved, Navarro initially distanced himself from the incident, but after no one else came forward to testify, he gathered up the courage to reveal what he saw.

At the witness stand, Navarro positively identified accused-appellant as the person who stabbed Cellona. Navarro also confided that accused-appellant pleaded for him not to testify because he had a family to take care of.

P/Insp. Aguisanda, a police officer assigned with the Homicide Section of the Philippine National Police (PNP) of Cebu City, testified that at around 2:00 o'clock in the morning on September 22, 2003, he was on duty at the

station when they received a call about a stabbing incident at Poblacion Pardo. He and three other police officers proceeded to the area and saw the lifeless and bloodied Cellona lying along A. Gabuya Street, Poblacion Pardo.[7] The 11-inch[8] blood-stained knife believed to have been used in the attack was found about four meters away.

The team proceeded to PNP-Station 7 at Pardo where accused-appellant was taken by the barangay tanod who apprehended him. There, accused-appellant was turned-over to their custody as well as a black[9] knife scabbard taken from him.[10] He was informed of his constitutional rights and he invoked his right to remain silent.[11]

Miller Abellanosa, the barangay tanod of Barangay Poblacion who accosted accused-appellant, narrated that at the time of the incident, he was patrolling a skywalk at the area when a commotion ensued. When he approached the place, a person pointed out Quindala to him as the person who stabbed Cellona. He ran after Quindala who stopped. Abellanosa then ordered him to raise his shirt and a knife scabbard fell out. Since they were near the PNP-Station 7, he brought the unresisting[12] accused-appellant there.[13] At the station, the knife recovered by P/Insp. Aguisanda's team fit the scabbard.[14]

Upon cross-examination, Abellanosa admitted that while he did not see the actual stabbing, he arrested the accused-appellant because an eyewitness pointed at Quindala as the one who stabbed the victim.[15]

The defense presented two witnesses, namely: accused-appellant and his friend, Tirso Mecarsos.

During his direct examination,[16] accused-appellant categorically denied the charge. He narrated that at around 1:55 o'clock in the morning of September 22, 2003, he was on his way home to Carcar, Cebu City from Poblacion Pardo, Cebu City. He had been waiting for a jeepney for about half an hour after plans to set up a "hantak" (cara y cruz) game for the fiesta fell through. Instead, he and his boss, Ramon Salazar, had a drinking session. He revealed that he knew the victim Narciso Cellona but not by that name because he also went by the moniker "Boy Kabayo". Cellona had even slept over at his house a few times.

He further testified that when a commotion broke out, he saw a barangay tanod shouting while running in his direction. He was taken by surprise when the tanod arrested him. Despite his protests, he was taken to the police station and placed in a detention cell.

Upon query, accused-appellant clarified that he did know the eyewitness Navarro.

Upon cross-examination,[17] he revealed that there were times when he gave money to the victim, explaining that it was customary for the bankero (treasurer) in hantak to give money to anyone who asked whenever they won a game. He also expressed his surprise that he was detained at the police station because after he protested against the arrest, the barangay tanod assured him that they will just settle the matter at the station. Even at that time, he did not yet know who had been killed.

Accused-Appellant further testified that after he was able to identify the victim, he accompanied the police officers to the house of the victim's brother. Strangely, the man who the victim previously introduced to him as his brother denied knowing the victim.

Defense witness Mecarsos testified[18] that he knew both the victim and the accused-appellant. He narrated that at the time in question, he was standing just across the victim who suddenly fell after being approached by a young man he could not identify. At that moment, he did not realize that the victim was stabbed. He noticed, however, that accused-appellant was far from where he and the victim were, taking charge of another game.[19]

He did not know what transpired after that because he and his wife went home at 2:00 o'clock in the morning. After that, he travelled to Leyte and it was only upon his return that he learned of accused-appellant's plight. He volunteered to testify for his friend.

On cross-examination, Mecarsos clarified that he did not see the actual stabbing incident, but what he saw was a young man calmly walking away towards the main road with a weapon after people started scampering.

On the strength of Affidavits executed by Navarro,[20] Abellana[21] and the responding police officers,[22] a Complaint for the crime of murder was filed against accused-appellant.[23] As a result, an Information dated September 23, 2003 was filed. It read:

The undersigned Asst. Prosecutor of the City of Cebu accuses ANTONIO FLAST QUINDALA Y DELOS NIEVES of the crime of Murder, committed as follows:

That on the 22[nd] day of September 2003 at about 1:55 A.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a knife, with deliberate intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and stab one Narciso Cellona with said knife, hitting the latter on the right side portion of his body and inflicting upon him stab wounds and as a consequence of said injuries, Narciso Cellona, died later.

SO ORDERED.

A Warrant of Arrest was issued on the same day,[24] and he was ordered committed to the Bagong Buhay Rehabilitation Center (BBRC) in Cebu City.[25]

Upon being arraigned, accused-appellant pleaded not guilty to the charge of murder.[26] During the pre-trial, the following facts were stipulated:

- Identity of Accused – Admitted.
- On February 22, 2003 at about 11:55 noon accused was at A. Gabuya Street, Pardo, Cebu City – Denied.
- Accused was in Cebu City – Admitted.
- Accused [armed] with a knife[,] approached the victim from the back and stabbed him several times – Denied.
- But even after the victim [ran], the accused chased and stabbed him – Not Admitted.[27]
- The fact of death of the victim – the photocopy of the certificate of death is attached to the record.

The post-mortem examination on the accused listed the cause of death as stab wounds on the right chest.[28]

Pending promulgation of decision, accused-appellant was found guilty in another criminal case[29] and ordered transferred to the New Bilibid Prisons (NBP) in Muntinlupa City.

On October 5, 2009, the RTC, Branch 24, Cebu City rendered the assailed decision finding accused-appellant guilty of the crime of murder for the death of Narciso Cellona.[30]

A Notice of Appeal was filed by accused-appellant through his counsel,[31] which notice was given due course.[32]

Assignment of Error:

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT

Ruling:

Accused-Appellant contends that his guilt was not proven beyond reasonable doubt because the eyewitness' testimony was improbable.

The appeal is bereft of merit. However, accused-appellant may only be convicted of the lesser crime of Homicide.

The defense submits that the eyewitness, Navarro could not have clearly seen the person who stabbed the victim because he naturally had his attention focused on the game he was supervising at the carnival.

An examination of the testimony of Navarro reveals a clear and categorical testimony, to wit:

Q: So while you were entertaining yourself with the parlor games, what happened?

A: I witnessed a stabbing incident.

Q: Did you know who was [stabbed]?

A: Only by his face.

Q: Please tell us what happened in that incident?

A: While I was watching a color game, this color game is a kind of game using colored balls. Then these balls will be thrown, the balls are being shot into a hole and you can win. Now, while I was in a square area and I was clinging myself somewhere in one of the corners, I saw that one person [make] a turn and then suddenly stabbed another person.

Q: Can you please tell the distance between you in relation to the person stabbed?

Court Interpreter: Witness here indicating a distance of four (4) meters, more or less.

Q: What part of the body was hit or stabbed?

Court Interpreter: Witness here pointing to the right portion of his chest near the breast.

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Q: So, what happened at the police station?

A: He pleaded for me to refuse being a witness because he is a family man.

Q: Did you happen to know his family name?

A: Yes, sir.

Q: What was his name?

A: Antonio Quindala.

Q: That Antonio Quindala you are talking about, is he the same person accused in this case?

A: Yes, sir.

Q: If that Antonio Quindala is inside this courtroom, would you still be able to identify him?

A: Yes, sir.

Q: Can you please identify him?

Court Interpreter: Witness here pointed directly to his left and pointed to the first person seated in the row of persons seated on the accused's bench who, when asked to identify himself, answered his name to be Antonio

Quindala.[33]

The measure of positive identification has been satisfied, and jurisprudence has repeatedly established that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.[34] This is even made more credible when he positively and categorically identified the accused-appellant in open court[35] such as in the case at bench.

No ill motive or malice could also be attributed to Navarro to testify against accused-appellant. Positive identification by a prosecution witness is entitled to greater weight than alibi and denial,[36] and it gains further ground in the absence of evil motive on the part of the witness to testify against the accused-appellant.[37] Navarro did know either the accused-appellant or the victim, and accused-appellant himself denied knowing Navarro. In *Barrera vs. People*,[38] the Supreme Court declared in this wise:

...the defense of denial by the petitioner fails in the light of the positive identification made by the prosecution witness, Jojo Fernandez. Positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitness testifying on the matter, as in the case at bar, prevails over alibi and denial which, if not substantiated by clear and convincing evidence undeserving of weight in law.

Moreover, there is no showing that the trial court, erred in giving credence to the testimony of Navarro. Well-entrenched in jurisprudence is that the court a quo's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.[39]

In the face of the accusation, accused-appellant interposes the defense of alibi. For denial or alibi to prosper, it must be established that not only was accused-appellant in another place at the time of the commission of the crime but that it was physically impossible for him to be at the scene at the time of commission.[40] Here, accused-appellant himself admitted that he was in the vicinity.

In addition, his only other witness was his friend, Mecarsos, who is a biased witness. The defense of alibi is given less probative weight when it is corroborated by friends and relatives who are not disinterested witnesses.[41] Worse, Mecarsos stated that accused-appellant was supervising a hantak game at the moment the stabbing occurred. Accused-Appellant testified that he was waiting for a jeepney at a nearby area.

Accused-Appellant also attacks as hearsay Navarro's declaration that accused-appellant had a pot session with his cousin, who also allegedly sharpened the knife used in the attack.[42] However, We find this allegation irrelevant and will not serve to affect the findings of the court a quo.

The felony committed was Homicide, not Murder.

A careful review of the Information filed against the accused-appellant, however, shows that while the events surrounding the killing was attended by treachery and evident premeditation, the averments therein are insufficient to properly indict him of the heinous crime of murder. The pertinent portion reads:

...the said accused, armed with a knife, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and stab one Narciso Cellona with said knife, hitting the latter on the right side portion of his body and inflicting upon him stab wounds and as a consequence of said injuries, Narciso Cellona died later.

The aforementioned averments notably failed to allege the specific circumstances surrounding the killing that would have qualified the killing to murder.

It is a settled rule that the averments contained in an Information serve as the accused-appellant's notice on the

charges against him. In fact, it is specifically required that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment.[43] This secures the constitutional right of the accused to be properly apprised of the nature and cause of the accusation against him and to fully prepare his defense during the trial without the risk of surprises.[44] Thus, qualifying circumstances are strictly to be alleged with particularity in the Information.[45]

In *People vs. Velez*,[46] the Supreme Court elucidated the sacred rule on sufficiency of the allegation embodied in an Information of a crime, to wit:

xxx And, fourthly, it is unavoidable for the Court to pronounce PO2 Valdez guilty of three homicides, instead of three murders, on account of the informations not sufficiently alleging the attendance of treachery.

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.

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. In *People vs. Dimaano*, the Court elaborated:

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.

The averments of the informations to the effect that the two accused “with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did xxx assault, attack and employ personal violence upon” the victims “by then and there shooting [them] with a gun, hitting [them]” on various parts of their bodies “which [were] the direct and immediate cause of [their] death[s]” did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was

directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations.

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice xxxx

A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved. In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter. [Emphases supplied.]

This pronouncement is in consonance with the rule that requires that the Information shall "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances.[47] A basic accusation declaring that accused-appellant "with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and stab," will not suffice to establish the attendance of treachery and evident premeditation. The prosecution failed to allege every single fact necessary to constitute all the elements of the offense charged.

Imposable Penalty

Pursuant to Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. There being no mitigating or aggravating circumstances modifying criminal liability, the penalty is applied in its medium period or 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence is taken from the penalty of prision mayor, and the maximum from the medium period of reclusion temporal. Hence, the impossible penalty is any period between six years and one day to 12 years of prision mayor as minimum to 17 years and four months of reclusion temporal as maximum.

Damages Awarded

The award of P50,000.00 as civil liability for the death of Narciso Cellona[48] is mandatory and is granted without need of proof other than the commission of the crime.[49] We also affirm the award of moral damages in the amount P50,000.[50]

The court a quo also granted P25,000.00 as actual damages. However, for actual damages to be awarded, there must be competent proof on the actual amount of loss in the form of duly issued receipts,[51] but the heirs of the victim were not able to submit any. In lieu of actual damages, temperate damages of P25,000.00 is awarded for

the pecuniary loss of the heirs of the victim.[52]

Also, we impose on all the monetary awards for damages, civil, moral and temperate, interest at the legal rate of six percent (6%) per annum from date of finality of the decision until fully paid.[53]

WHEREFORE, premises considered, the Decision dated October 5, 2009 of the Regional Trial Court, Branch 24, of Cebu City is AFFIRMED WITH MODIFICATION. Accused-Appellant ANTONIO FLAST QUINDALA Y DE LOS NIEVES is hereby found GUILTY beyond reasonable doubt of Homicide as defined and penalized by Article 249 of the Revised Penal Code, and is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years as minimum, to seventeen (17) years and four (4) months as maximum.

Accused-Appellant shall also be liable for the following monetary damages:

- P50,000.00 as civil liability ex delicto;
- P50,000.00 in moral damages;
- P25,000.00 as temperate damages; and
- Interest of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Ingles, Chairperson, and Lagura-Yap, JJ., concur.

[1] Rollo, pp. 23-34.

[2] Rollo, pp. 200-204.

[3] TSN dated November 22, 2005, p. 5.

[4] TSN dated September 6, 2004, p. 4.

[5] TSN dated November 22, 2005, p. 4.

[6] TSN dated November 22, 2005, p. 6.

[7] TSN dated May 29, 2006, p. 4

[8] TSN dated May 29, 2006, p. 5.

[9] TSN dated October 17, 2006, p. 5.

[10] TSN dated May 29, 2006, p. 6.

[11] TSN dated May 29, 2003, p. 7.

[12] TSN dated October 17, 2006, p. 5.

[13] TSN dated October 17, 2006, 4.

[14] TSN dated December 5, 2006, pp. 3-4.

[15] TSN dated December 5, 2006, p. 6.

[16] TSN dated March 21, 2007.

- [17] TSN dated June 19, 2007.
- [18] TSN dated July 1, 2008.
- [19] TSN dated July 1, 2008, p. 4.
- [20] Records, p. 3.
- [21] Records, p. 4.
- [22] SPO1 Jay T. Yballe, PO3 Jimmy L. Aguisanda, PO1 Buenaventura M. Ursaiz and PO1 Edilson M. Montero; records, p. 5.
- [23] Records, p. 8.
- [24] Records, p. 9.
- [25] Order for Detention During the Pendency of the Case; records, 10.
- [26] Records, p. 13.
- [27] Pre-Trial Order; records, p. 17.
- [28] Necropsy Report No. 2003-NO-274G prepared by Dr. Gil C. Macato, Medico Legal Officer II, NBI-CEVRO, Cebu City; records, p. 31. Dr. Macato testimony dispensed with per Order dated December 13, 2004; records, p. 33.
- [29] CBU-57903 for Violation of Republic Act No. 8294 and CBU-57904 for Violation of COMELEC Gun Ban, promulgated on October 7, 2003; records, pp. 96-97, 114-115.
- [30] Decision promulgated in the presence of accused-appellant on November 24, 2009 per Order issued on the same day by the RTC, Branch 206, Muntinlupa City; records, p. 113.
- [31] Records, p. 116.
- [32] Records, p. 137.
- [33] TSN dated November 6, 2004, pp. 5-6.
- [34] People vs. Jalbonian, G.R. No. 180281, July 1, 2013.
- [35] People vs. Aquino, G.R. No. 201092, January 15, 2014.
- [36] People vs. Tomas, Sr., G.R. No. 192251, February 16, 2011.
- [37] People vs. Rarugal, G.R. No. 188603, January 16, 2003.
- [38] G.R. No. 134727, February 19, 2001, quoting Bautista vs. Court of Appeals, G.R. No. 121683, March 26, 1998.
- [39] People vs. Ibañez, G.R. No. 197813, September 25, 2013.
- [40] People vs. Hatsero, G.R. No. 192179, July 3, 2013.
- [41] People vs. Basallo, G.R. No. 182457, January 30, 2013.
- [42] Rollo, pp. 30-31.
- [43] Ibid.; Rule 110, Section 9, Revised Rules of Court.

[44] People vs. Lab-eo, G.R. No. 133438, January 16, 2002.

[45] Go vs. BSP, G.R. No. 178429, October 23, 2009; Article III, par. 14(1), 1987 Philippine Constitutional.

[46] G.R. No. 175602, January 18, 2012.

[47] Section 8 of Rule 110 of the Revised Rules on Criminal Procedure.

[48] Villa vs. People, G.R. No. 200210, March 05, 2012, citing People vs. Ducabo, G.R. No. 175594, September 28, 2007.

[49] People vs. Anticamara, G.R. No. 178771, June 8, 2011.

[50] People vs. Malicdem, G.R. No. 184601, November 12, 2012.

[51] Tan vs. OMC Carriers, Inc., G.R. No. 190521, January 12, 2011.

[52] Article 2224 of the Civil Code; People vs. Buyagan, G.R. No. 187733, February 8, 2012.

[53] Guevarra vs. People, G.R. No. 170462, February 5, 2014, People v. Concillado, G.R. No. 181204, November 28, 2011

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