

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PETER LUGO AND MARIO “ETOP” PUCLALAY, ACCUSED,

Ponente: SADANG, J.

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SADANG, J.:

This is an ordinary appeal from the Decision,[1] dated February 28, 2008, of the Regional Trial Court of Nueva Vizcaya, Branch 30, in Criminal Case No. 1938, convicting accused-appellant Mario “Etop” Puclalay of the crime of murder.

Accused-appellant Puclalay (hereafter, accused) and Peter Lugo were charged with murder in the Information that reads:

That on or about September 21, 2004 in Kayapa, Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, treachery, and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab the victim Freddie Amuyen with a bolo while the latter was urinating, thereby inflicting fatal wounds on said victim which was the direct cause of his death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[2]

Accused was arraigned on April 28, 2005 with the assistance of Atty. Francisco Pilpil. He pleaded not guilty, hence, pre-trial and trial ensued with respect to him. Peter Lugo remains at large.

As may be gathered from the testimonies of Denver Agunay and Philip Agageo, the prosecution's case is, as follows:

On September 21, 2004, at around 9 PM, Freddie Amuyen (the victim), Denver Agunay, Philip Agageo, Roger Carillo, and John Siclat were seated around a table at the videoke bar of Zenaida Morales at Pingkian, Kayapa, Nueva Vizcaya having a drinking spree. Also drinking at an extension of the bar were accused and Peter Lugo. All seven men were employed by the China Dui Construction to build ditches along the Pingkian road but they worked at different sites and lived in different bunkers.[3]

At around 11:40 PM, Freddie and Denver left the videoke bar to return to their bunkhouse in Pingkian, leaving Philip, Roger and John behind. After walking a distance of ten meters from the bar, Freddie went to the side of the road to relieve himself. Denver was about three to four meters from him. Suddenly, accused emerged from the opposite side of the road and punched Denver on the face. As Denver sat and shouted for help, he saw Peter coming from where accused had emerged and moving towards Freddie. At that point, while Freddie was still relieving himself, accused grabbed Freddie's hands and locked them together behind his back up to the level of the armpit. Freddie shouted for help and tried to extricate himself from accused's stranglehold. Philip, who was at the bar, heard Denver's and Freddie's cries for help and he rushed to the scene. Roger followed Philip, lugging a flashlight. From a distance of two meters and by the light coming from Roger's flashlight, Philip saw Peter stab Freddie with a foot-long knife on the stomach, then on the chest,[4] while Freddie's hands were being held together behind his back by accused. On seeing Philip, accused and Peter fled the scene, taking the road to

Barangay Baan. Philip gave chase but he was not able to catch up with the two. He returned to the scene of the crime and there he saw John, Zenaida Morales and her husband, Pascual. Philip asked Freddie who stabbed him and Freddie replied that it was Peter and his companion.[5] Thereafter, Philip, Roger, John, and Zenaida boarded Freddie on Pascual's jeep and rushed him to the Bambang Hospital; however, the hospital was not capable of treating Freddie so they brought him to the Bayombong Veterans Regional Hospital. Freddie asked Philip to stay with him in the emergency room. Philip again asked Freddie who stabbed him and the latter gave the same answer. Freddie was wheeled to the operating room and later to the recovery room. He expired at around 7 PM on September 22, 2004.[6] The Medico-Legal Certification[7] issued by Dr. Febryan Erwin Sarmiento shows that Freddie sustained multiple stab wounds and succumbed to cardio-respiratory arrest.

Freddie's mother, Elizabeth Amuyen, stated that she spent P15,000.00 to hire a vehicle to transport Freddie's body to their house in Kalinga, P9,000.00 for the coffin, P15,000.00 for hospital bills, and P185,000.00 for food and other expenses for the wake and 40[th] day of Freddie's death.[8]

Testifying in his defense, accused claimed that on the night in question, Peter invited him to go to Zenaida's videoke bar to buy cigarettes. They arrived at 8 PM and drank in front of the bar. While he and Peter were drinking gin, he saw five men inside the bar, including Freddie and Denver. At 8:30 PM, he saw Freddie and Denver leave the bar and walk towards the road. At past 9 PM, he also left the bar and headed home to Barangay Baan, taking the road leading to Pingkian. Peter left the bar at almost 11 PM.[9]

Accused denied any involvement in the stabbing incident. He claimed that from the videoke bar, he went straight home, about two kilometers from the videoke bar, and did not go to any other place. His wife and two children were in the house when he got there at past 10 PM and he slept all night from 11 PM. Accused declared that prior to the incident in question there was no animosity between him and Freddie.[10]

Accused's wife, Elsie Puclalay, corroborated his testimony. She stated that on September 21, 2004, accused arrived home at past 10 PM and they all slept. She testified that accused woke up at 6 AM the next day[11] and was arrested on April 8, 2005.[12]

After trial, the RTC rendered its Decision, the fallo of which reads:

WHEREFORE, premises considered, the court, after finding the accused, MARIO 'ETOP' PUCLALAY, GUILTY beyond reasonable doubt of the crime of Murder, he is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of Freddie Amuyen the following amounts of P50,000.00 as mandatory death indemnity, the total of P53,000.00 representing hospital expenses in the sum of P24,000.00, for the coffin amounting to P9,000.00, for vehicle hire in the transport of victim's cadaver to his hometown in Kalinga in the sum of P20,000.00 and finally the amount of P50,000.00 further actually spent in the holding of the victim's wake and interment.

The Provincial Warden shall cause the immediate transfer of Mario "Etop" Puclalay to the National Penitentiary to serve out his sentence.

Mario 'Etop' Puclalay shall be credited in the service of his sentence with the full time that he has been on detention in the pendency of this case.

In the meantime, let an alias warrant of arrest be issued for the apprehension of Peter Lugo.

SO ORDERED.[13]

Accused filed a Notice of Appeal[14] which the trial court approved in an Order[15] dated June 30, 2008.

Accused poses the following issues:

I. WHETHER OR NOT THERE IS A PROPER IDENTIFICATION OF THE ACCUSED ETOP PUCLALAY OR THERE IS A DOUBT AS TO HIS IDENTIFICATION.

II. WHETHER OR NOT THERE IS TREACHERY.

III. WHETHER OR NOT THERE IS ABUSE OF SUPERIOR STRENGTH.[16]

Ruling

Accused assails the accuracy and reliability of the identification made by prosecution witnesses Denver Agunay and Philip Agageo. He points out inconsistencies between their sworn statements before the police and their declarations in court. He argues that their sworn statements should have been given more weight and credence.

The contention does not persuade. As a rule, affidavits taken before the police are considered to be incomplete and often inaccurate, sometimes from partial suggestions and inquiries, without the aid of which the witnesses may be unable to recall the connected circumstances necessary for their accurate recollection.[17] Affidavits are frequently prepared by administering officers and cast in their language and understanding of what affiants have said.[18] Thus, inconsistencies between a sworn statement and testimony in open court do not necessarily discredit the witness. The discrepancies can still be reconciled by giving greater weight to the witness' declarations in court. As held in *People v. Mangat*:

Even if there was an inconsistency between Pacifico's affidavit and his testimony in open court, it can still be easily reconciled by affording greater weight to his open court declaration. In *People v. Mayor Antonio L. Sanchez, et al.*[19], this Court held that discrepancies between sworn statements and testimonies made at the witness stand do not necessarily discredit the witness. Sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Testimonies given during trials are much more exact and elaborate. Thus testimonial evidence carries more weight than sworn statements.[20] (underscoring supplied)

Further, when he was confronted with his sworn statement at the trial, Denver Agunay insisted that it was not the statement that he gave. He averred that he was not able to read the document and the contents thereof were not explained to him but he signed it because he was in a hurry to return to Tabuk.[21]

In any case, contrary to accused's contention, his identification as one of the malefactors was established by the prosecution. The evidence shows that Roger had shone his flashlight on the accused and Peter and Philip was able to recognize them.[22] The presence of the accused at the crime scene was also established by Denver who testified that accused was in front of him when accused punched him on the face. Denver also stated that after punching him, accused rushed towards Freddie who was only three meters away from him.[23] Philip also recognized the accused and Peter because earlier in the day he had asked them if they know a place where he could buy lumber.[24]

Even if, as contended by accused, the prosecution witnesses did not know him by name before the incident that does not affect their credibility. In criminal prosecution, what is important is recognition, meaning, that the witnesses are able to positively identify the felon in open court. There is nothing in law or jurisprudence that requires, as a condition sine qua non, that for a positive identification of a felon by a prosecution witness to be good, the witness must first know the former personally.[25] The witness need not have to know the name of the accused as long as he recognizes his face.[26] Knowing the identity of an accused is different from knowing his name; hence, the positive identification of the malefactor should not be disregarded just because his name was supplied to the eyewitness. The weight of the eyewitness' account is premised on the fact that the witness saw the accused commit the crime and not because he knew his name or was familiar to him.[27] Further, being a cousin

of Freddie,[28] Denver had the natural tendency to remember the face the assailants. As held in *Maturillas v. People*,[29] a witness related to the victim has a natural tendency to remember the faces of the person involved in the attack on the victim, because relatives, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor before the law. Moreover, considering that accused did not even attempt to prove ill motive on the part of the prosecution witnesses to impute to him a serious offense, their positive identification is worthy of full faith and credit.[30]

Accused contends that there is no treachery because there was a conversation before Denver was boxed by one of the suspects, thus, Freddie and Denver were forewarned and they could have retaliated or fled from the scene. The contention is untenable.

Article 248[31] of the Revised Penal Code defines “murder” as the unlawful killing of a person, which is not parricide or infanticide, provided that treachery, among other circumstances, attended the killing. The presence of one of the circumstances enumerated in Art. 248 of the Code would suffice to qualify a killing as murder.[32]

There is treachery when in killing the victim the offender deliberately and consciously adopted means, methods, or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense or retaliation which the offended party might make.[33] The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of an unsuspecting victim, depriving the latter of any real chance to defend himself or retaliate, thereby ensuring the commission of the crime without risk to the aggressor.[34] Thus, treachery may still be appreciated even if the victim was facing the assailant.[35]

The evidence shows that the victim was attacked while he was in the naturally vulnerable act of relieving himself. He was totally unsuspecting of the upcoming attack on his person and was neither prepared nor positioned to defend himself. Based on Denver's eyewitness account, accused came from behind Freddie and grabbed his hands and held and locked them together behind his back and while the victim was so immobilized, Peter thrust a knife into his stomach, eviscerating him. There can be no doubt that the sudden, simultaneous, and coordinated actions of accused and his companion ensured that the victim would have no real chance to defend himself thereby ensuring the commission of the crime without any risk to themselves. This is the essence of treachery.

The actions of accused demonstrated a unity of design between him and his companion which is of the essence of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[36] To establish the existence of conspiracy, direct proof is not essential.[37] It may be inferred from the acts of the accused before, during and after the commission of the crime, which indubitably point to and are indicative of a joint purpose, concert of action, and community of interest.[38] It must be shown that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.[39] It is axiomatic that once conspiracy is established, the act of one is the act of all.[40] All conspirators are liable as co-principals. Each conspirator is responsible for everything done by his confederates.[41]

Inasmuch as the qualifying circumstance of treachery has been shown beyond reasonable doubt, accused's contention about the absence of abuse of superior strength is no longer relevant. As held in *People v. Valdez*,[42] a consideration of the aggravating circumstance of abuse of superior strength after a finding of treachery contravenes the very basic and elementary doctrine in our jurisdiction that abuse of superior strength is absorbed in treachery.

Accused's defense of denial and alibi must fail in the light of his positive identification by the prosecution witnesses.[43] To be accepted, denial and alibi must be substantiated by clear and convincing evidence showing not only that the accused did not take part in the commission of the imputed criminal act but also that it was

physically impossible for him to be at or near the place of the commission of the act at or about the time of its commission[44] the reason being that no person can be in two places at the same time.[45] Accused was not able to establish the requisites of his defense.

The award of damages must be modified. Moral damages in the amount of P50,000.00 must be awarded to the heirs of the victim simply on the basis of the death of the victim.[46] Exemplary damages in the amount of P30,000.00 must also be awarded because said award is proper where the crime was committed with an aggravating circumstance, be it generic or qualifying.[47] The damages awarded should be subject to interest at the legal rate of 6% per annum from finality of the judgment of conviction until fully paid.[48]

WHEREFORE, the appeal is DENIED. The Decision, dated February 28, 2008, of the Regional Trial Court of Nueva Vizcaya, Branch 30, in Criminal Case No. 1938 is AFFIRMED with MODIFICATIONS in that accused-appellant Mario “Etop” Puclalay is further ordered to pay the heirs of Freddie Amuyen the amounts of P50,000.00 as moral damages, P30,000.00 as exemplary damages, and interest at the legal rate of 6% per annum on all the damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Librea-Leagogo, J., Chairperson, and [*]Hernando, JJ., concur.

[*] Vice J. Javier, per Office Order No. 51-15-RSF dated February 16, 2015.

[1] Records, pp. 179-265.

[2] Id., p. 24.

[3] TSN, September 27, 2005, pp. 10 and 13; October 12, 2005, pp. 2, 3, and 4; October 18, 2005, pp.8 and 9; November 24, 2005, p. 8; July 18, 2006, p. 2.

[4] TSN, September 27, 2005, pp. 12, 13, 14-18; October 12, 2005, pp. 4, 8, 10, 11-12, 16, 18, 19, 20, and 22; October 18, 2005, pp. 8, 11, and 12; November 24, 2005, p. 9; November 29, 2005, pp. 4, 5, 8, 9, and 10.

[5] TSN, September 27, 2005, pp. 12 and 19; October 12, 2005, pp. 15 and 20; October 18, 2005, pp. 9-14; November 29, 2005, pp. 3, 4, 5, 6, 8, and 9.

[6] TSN, September 27, 2005, pp. 20-22; October 18, 2005, pp. 14-17.

[7] Records, p. 13.

[8] TSN, August 2, 2005, pp. 3-6.

[9] TSN, July 26, 2006, pp. 3, 4, and 5; August 29, 2006, pp. 2, 4, 7, 12, 14, 19, 20, and 23; September 4, 2006, pp. 3, 4, and 5; September 19, 2006, pp. 2-4, 7, and 8; October 10, 2006, p. 2; November 21, 2006, pp. 3 and 4; November 29, 2006, p. 2; March 20, 2007, pp. 2, 3, 4, and 10.

[10] TSN, July 26, 2006, p. 2; September 4, 2006, p. 6; September 19, 2006, pp. 10, 11, 13, 14, and 15; October 10, 2006, p. 2; November 29, 2006, pp. 5-6 and 7.

[11] TSN, June 5, 2007, pp. 3-5.

[12] Records, p. 32; TSN, November 29, 2006, p. 7.

[13] Records, pp. 264-265.

[14] *Id.*, pp. 267-268.

[15] *Id.*, p. 272.

[16] *Rollo*, p. 136.

[17] *People v. Delmindo*, 429 SCRA 546 (2004); *People v. Sara*, 417 SCRA 431 (2003).

[18] *People v. Caraang*, 418 SCRA 321 (2003); *People v. Cueto*, 443 Phil. 425 (2003).

[19] 302 SCRA 21

[20] 310 SCRA 101, 110-111

[21] *TSN*, October 12, 2005, p. 7.

[22] *TSN*, September 27, 2005, p. 19; October 12, 2005, pp. 12, 14, 15, 20, and 22; November 29, 2005, pp. 3, 6, 8, and 9.

[23] *TSN*, October 12, 2005, pp. 12, 18, and 19.

[24] *TSN*, October 18, 2005, p. 5.

[25] *Guiyab v. People*, G.R. No. 152527, October 20, 2005; *People v. Barreta*, G.R. No. 120367, October 16, 2000; *People v. Daraman*, 294 SCRA 27 (1998).

[26] *Guiyab v. People*, *id.*; *People v. Vaynaco*, G.R. No. 126286, March 22, 1999; *People v. Evangelista*, 282 SCRA 37 (1997).

[27] *Guiyab v. People*, *supra*; *People v. Barredo*, G.R. No. 122850, October 7, 1998; *People v. Agsunod, Jr.*, G.R. No. 118331, May 3, 1991.

[28] See note 3

[29] G.R. No. 163217, April 18, 2006.

[30] *People v. Algarme*, G.R. No. 175978, February 12, 2009; *People v. Salas*, G.R. No. 115192, March 7, 2000; *People v. Laurente*, G.R. No. 116734, March 29, 1996.

[31] 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 perpetua to death if committed with any of the following attendant circumstances:

1. 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. x x x x

[32] *People v. Sanchez*, G.R. No. 188610, June 29, 2010.

[33] *People v. Galicia*, G.R. No. 191063, October 9, 2013; *People v. Sanchez*, *id.*; *People v. Napalit*, G.R. No. 181247, March 19, 2010; *People v. Alapara*, G.R. No. 180421, October 30, 2009.

[34] *People v. Angeles*, G.R. No. 177134, August 14, 2009; *People v. Guzman*, G.R. No. 169246, January 26, 2007; *People v. Fallorina*, G.R. No. 137347, March 4, 2004; *People v. Almedilla*, G.R. No. 150590, August 21, 2003; *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003.

[35] *People v. Villarico, Sr.*, G.R. No. 158362, April 4, 2011; *People v. Aguilar*, 88 Phil. 693 (1951).

- [36] Article 8, Revised Penal Code; *People v. Bacungay*, G.R. No. 125017, March 12, 2002.
- [37] *People v. Ronquillo*, G.R. No. 126136, April 5, 2002; *People v. Canoy*, G.R. Nos. 122510-11, March 17, 2000; *People v. Geguira*, G.R. No. 130769, March 13, 2000.
- [38] *People v. Tejero*, G.R. No. 135050, April 19, 2002; *People v. Listerio*, G.R. No. 122099, July 5, 2000.
- [39] *People v. Bautista*, G.R. No. 188601, June 29, 2010; *People v. Dy*, G.R. Nos. 115236-37, January 29, 2002.
- [40] *People v. Villarico, Sr.*, supra; *People v. Pablo*, G.R. Nos. 120394-97, January 16, 2001; *People v. Sotes*, G.R. No. 101337, August 7, 1996.
- [41] *People v. Villarico, Sr.*, supra; *People v. Bautista*, supra; *People v. Pagalasan*, G.R. Nos. 131926 and 138991, June 18, 2003; *People v. Pablo*, supra; *People v. Peralta*, G.R. No. L-19069, October 29, 1968.
- [42] 304 SCRA 611, 627, cited in *People v. Lab-eo*, G.R. No. 133438, January 16, 2002
- [43] *People v. Rarugal*, G.R. No. 188603, January 16, 2013; *People v. Gonzales*, G.R. No. 140676, July 31, 2002; *People v. Cardesan*, G.R. No. L-29090, April 29, 1974.
- [44] *Malana v. People*, G.R. No. 173612, March 26, 2008; *People v. Abendan*, G.R. Nos. 132026-27, June 28, 2001.
- [45] *People v. Bracamonte*, G.R. No. 95939, June 17, 1996.
- [46] *People v. Gatarin*, G.R. No. 198022, April 7, 2014; *People v. Dejillo*, G.R. No. 185005, December 10, 2012; *People v. Napalit*, G.R. No. 181247, March 19, 2010; *People v. Badriago*, G.R. No. 183566, May 8, 2009; *People v. Berondo, Jr.*, G.R. No. 177827, March 30, 2009.
- [47] *People v. Salafranca*, G.R. No. 173476, February 22, 2012; *People v. Escleto*, G.R. No. 183706, April 25, 2012; *People v. Sanchez*, supra; *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010; *People v. Regalario*, G.R. No. 174483, March 31, 2009.
- [48] *People v. Buclao*, G.R. No. 208173, June 11, 2014; *People v. Vidaña*, G.R. No. 199210, October 23, 2013; *People v. Diaz*, G.R. No. 200882, June 13, 2013.

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