

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJIE LAGAO Y GARCIA @ BINGO, ACCUSED-APPELLANT.

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

This is an appeal under Rule 122 of the Revised Rules of Court seeking to annul and set aside the decision[1] dated April 24, 2012 and the order[2] dated May 24, 2012 of the Regional Trial Court (RTC) of Bauang, La Union, Branch 33.

The antecedents of this case are as follows:

Alfredo Nerida, Sr., as the father of the late Anthony Nerida, filed a complaint[3] against the accused for homicide with the Office of the Provincial Prosecutor in Agoo, La Union. Finding probable cause to the crime charged, an information[4] dated April 30, 2008 was filed against the accused with the Regional Trial Court (RTC) of Bauang, La Union. The information reads as follows:

“That on or about 20th day of February 2008, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hit and struck with the use of a hard object, one ANTHONY SUMAD-ONG NERIDA and inflicting upon said person fatal injuries which caused his untimely death, to the damage and prejudice of the heirs of said victim.

CONTRARY TO LAW.”[5]

When arraigned, the accused-appellant pleaded “not guilty” to the crime charged.

On April 24, 2012, the RTC rendered a judgment finding the accused guilty beyond reasonable doubt of the crime of homicide. The dispositive portion of the decision[6] dated April 24, 2012 reads:

“WHEREFORE, the Court finds and declares the accused BENJIE LAGAO Y GARCIA, guilty beyond reasonable doubt, of the crime of Homicide, and hereby sentences him to suffer the indeterminate penalty of EIGHT (8) YEARS and ONE (1) day of prision mayor, as minimum to TWELVE YEARS and ONE (1) DAY of reclusion temporal, as maximum; to pay the heirs of the victim Anthony Nerida, the following amounts:

- a) Php18,600, as actual damages;
- b) Php50,000.00 for moral damages;
- c) Php50,000.00 death indemnity;
- d) and to pay the costs.

SO ORDERED.”[7]

A motion for reconsideration was filed by the accused, through the Public Attorney's Office, but the said motion was denied for lack of merit in the order[8] dated May 24, 2012. The order reads as follows:

“There being no cogent reason to reconsider the Decision, dated April 24, 2012, coupled with the fact that no

new issue is raised to compel the reversal of the assailed decision, the motion is DENIED for lack of merit.

Meantime, the prayer for the increase of bail bond filed by the Public Prosecutor is granted and accused is ordered to post an additional bond of Php20,000.00, failing which, the Court shall order his immediate arrest.

SO ORDERED.”[9]

A notice of appeal[10] was filed by the accused, through the Public Attorney's Office, with the RTC of Bauang, La Union, Branch 33 on May 24, 2012.

Hence, this appeal.

The issue in this case is whether or not the RTC committed serious errors in finding the accused-appellant guilty of the crime charged beyond reasonable doubt.

THE APPEAL IS BEREFT OF MERIT.

The accused-appellant contended that the prosecution witnesses, namely Ricardo De Guzman and Ryan Cruz, were not eyewitnesses to the commission of the crime, and their testimonies were not based on their personal knowledge nor derived from their own perception. The said witnesses merely testified on facts relayed to them by the deceased victim. Thus, their testimonies were mere hearsay and they are inadmissible in evidence. In finding the accused-appellant guilty beyond reasonable doubt to the crime charged, the RTC committed serious errors in rendering its decision based on the testimonies of the said prosecution witnesses because moral certainty was not established that the accused-appellant indeed committed the crime of homicide.

Section 36 of Rule 130 of the Revised Rules of Court states the rule on hearsay evidence as follows:

"Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."

Under the above rule, any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, the information that is relayed to the witness by some other person before it reaches the court is considered hearsay.

In this case, the prosecution witnesses, namely, Ricardo De Guzman and Ryan Cruz, testified during the trial that the deceased told them as to who inflicted injury to him. They testified to a matter of fact that the deceased made such statement which had been derived from their own perception. Thus, their testimonies cannot be considered as hearsay because what was sought to be admitted as evidence was the fact that the utterance was actually made by the deceased, not necessarily that the matters stated therein were true. On this basis, a statement attributed to a person who is not on the witness stand is admissible and it is not covered by the hearsay rule. Evidence regarding the making of such statement is not secondary but primary, because the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of that fact.[11]

Based on the records of this case, Dr. Bernardo Parado, a municipal health officer of Bauang, La Union, testified also during the trial that he conducted an autopsy on the cadaver of the deceased and declared that the cause of his death was cardio-respiratory arrest secondary to hypovolemic shock secondary to intracranial hemorrhage secondary to blunt force injury occipital area, middle. These findings of Dr. Parado were corroborated by the testimonies of the other two prosecution witnesses, which strengthen the fact on the statements made by the deceased to the said witnesses that he was struck with a blunt object on his head by the accused-appellant.

With the testimonies of the prosecution witnesses, the accused-appellant merely interposed a defense of denial. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[12]

This Court is convinced that the statement made by the deceased and the testimonies of the prosecution witnesses on the declaration of the deceased that it was the accused-appellant who inflicted injury on him is part of the *res gestae*. The rule on *res gestae* applies when the declarant himself did not testify provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[13] The lapse of time from which the deceased was inflicted injury by the accused-appellant and the making of the statements to the prosecution witnesses brings the case beyond the application of the *res gestae* rule.

The requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[14] This Court finds that the prosecution has discharged its burden of proving the guilt of the accused-appellant for the crime of homicide with moral certainty.

It has been held that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination.[15] This Court affirms the findings of the trial court.

In conclusion, the elements of the crime of homicide under Article 249 of the Revised Penal Code were duly proven, to wit: that a person was killed; that the accused killed him without any justifying circumstance; that the accused had the intention to kill, which is presumed; that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

WHEREFORE, premises considered, the appeal is DISMISSED for utter lack of merit. The decision dated April 24, 2012 and the order dated May 24, 2012 of the Regional Trial Court (RTC) of Bauang, La Union, Branch 33 are AFFIRMED.

SO ORDERED.

Rosario and Bueser,[*] JJ., concur.

[*] Vice Justice Leoncia R. Dimagiba, per Office Order No. 244-14-ABR dated May 26, 2014.

[1] Rollo, pp. 18-21.

[2] Original Records, p. 256.

[3] *ibid.*, p. 5.

[4] *ibid.*, p. 1.

[5] Original Records, p. 1.

[6] Rollo, pp. 18-21.

[7] *ibid.*, p. 21.

[8] Original Records, p. 256.

[9] Original Records, p. 256.

[10] Rollo, p. 16.

[11] Bon vs. People, G.R. No. 152160, January 13, 2004.

[12] Dela Cruz vs. Court of Appeals, G.R. No. 139150, July 20, 2001.

[13] People vs. Cabrera, Jr., G.R. No. 138266, April 30, 2003.

[14] People vs. Guihama, G.R. No. 126113, June 25, 2003.

[15] People vs. Dolorido y Estrada, G.R. No. 191721, January 12, 2011.

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