

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICOMEDES RAMO AND ROGELIO RAMO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-33225. September 28, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Nicomedes Ramo and his brother Rogelio were charged with the crime of murder before the then Court of First Instance of Misamis Occidental, allegedly committed in the language of the information, as follows:

"That on or about the 22nd day of May, 1970, at 4:00 o'clock in the afternoon, in the barrio of Site, municipality of Jimenez, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused Nicomedes Ramo and Rogelio Ramo who are brothers, conspiring and confederating together with intent to kill, did then and there willfully, unlawfully and feloniously, said accused Rogelio Ramo box the deceased Fernando Magsayo, hitting the latter on the base of the right ear who fell to the ground and while in that position, co-accused Nicomedes Ramo stab said Fernando Magsayo with a sharp pointed weapon locally known as "ponial", thereby inflicting fatal wound on the right axilla of the deceased Fernando Magsayo, and as a result of the said wound, Fernando Magsayo died." [1]

Thereafter tried upon his non-guilty plea, Nicomedes was found guilty as charged, and sentenced to reclusion perpetua, while Rogelio was convicted of less serious physical injuries. The dispositive portion of the decision reads as follows:

"In view of the foregoing and evidence considered, the Court finds Nicomedes Ramo guilty beyond reasonable doubt of the crime of murder attended by the aggravating circumstance of treachery and the mitigating circumstance of voluntary surrender and Rogelio Ramo only of less serious physical injury and they are hereby correspondingly sentenced: Nicomedes Ramo who is responsible for the death of Fernando Magsayo to suffer RECLUSION PERPETUA; to indemnify the heirs of Fernando Magsayo the sum of P12,000.00; Rogelio Ramo to suffer imprisonment of ONE (1) YEAR EIGHT (8) MONTHS and ONE (1) DAY to TWO (2) YEARS and FOUR (4) MONTHS of Arresto Mayor in its maximum period to prison correccional, minimum; each to suffer the corresponding other accessory penalties provided for by law; and to pay one-half each of the costs." [2]

The principal issue raised by appellants is the credibility of witnesses. Additionally, Nicomedes Ramo assails the lower court's conclusion as to the presence of treachery in the commission of the offense, while Rogelio, convicted of less serious physical injuries, disputes the penalty imposed upon him as excessive.

The facts established by the prosecution are summarized in the People's brief as follows:

"On May 22, 1970, at around 4:00 o'clock in the afternoon, the following facts occurred:

"Sergio Bugtong, a farmer, was watching a baseball game at the barrio market of Site, Jimenez, Misamis Occidental (pp. 11-12, p. 14, tsn, August 11, 1970). He saw Fernando Magsayo standing two fathoms away

from him, also looking at the ball game (p. 14, tsn, *ibid.*). He also saw the appellant Rogelio Ramo drink-ing plenty of tuba at a nearby store, together with the Bayanihan Group called Honglos (p. 18, tsn, *ibid.*). Suddenly, after Rogelio had finished drinking, he approached Fernando Magsayo from behind and boxed him at the base of the right ear (pp. 24-25, tsn, *ibid.*). Fernando Magsayo fell to the ground, and as he tried to rise, the other appellant, Nicomedes Ramo, stabbed him with a dagger (Exhibit B) on the right side of his back, (pp. 12-13, 25, tsn, *ibid.*). Sergio Bugtong was puzzled and surprised, because the three of them were not quarrelling and they did not have any argument beforehand (pp. 14-15, 25, tsn, *ibid.*).

"After the stabbing incident, Rogelio Ramo went to a nearby store and slashed a kettle, asking who among the people there wanted to challenge him (p. 15, tsn, *ibid.*). Thereafter, the appellants proceeded to the southern portion of the scene of the incident where they met Rustico Tac-an, uncle of the appellants, and a barrio councilman. The latter advised them to surrender, but they did not heed his advice, so Rustico Tac-an boxed Rogelio on the right eye. Rogelio attempted to stab Rustico Tac-an but the barrio captain arrived and he apprehended the appellants and, forthwith, brought them to the municipal building (pp. 16-17, tsn, *ibid.*; pp. 10-11, tsn, Sept. 3, 1970).

"Luisa Sumanduran, the wife of Fer-nando Magsayo, saw everything that happened to her husband (p. 31, tsn, August 12, 1970). She was selling ricecakes and refreshments at a store only four meters away from the ball game (p. 43, tsn, *ibid.*). After seeing that her husband was boxed by Rogelio Ramo and then stabbed by Nicomedes Ramo, she ran to him and held him in her arms, but her hus-band was already dead. Then the people scampered away, and only her mother-in-law and herself were left attending to the dead body of her husband. She saw Sergio Bugtong, however, standing by, but later on, he also went home (pp. 44-45, tsn, *ibid.*). She believes that the reason her husband was stabbed and killed by the appellants is that the latter suspected her husband as the one who killed their elder brother (p. 34, tsn, *ibid.*). She also exhibited in court the shirt worn by her husband on that fatal day, (Exhibit C), pointing to a cut on the right side of the back of the shirt (Exhibit C-1), as the spot where her husband was hit by the stab blow of Nicomedes Ramo (pp. 32-33, tsn, *ibid.*). The post mortem certificate dated May 23, 1970, issued by Dr. Julio G. Saceda, the Municipal Health Officer, is attached to the records as Exhibit A (p. 3, Records). It states the following findings, to wit:

"1. Wound, stabbed, 1.5 inches in length, 8 inches in depth, located at the lateral portion of the right axilla, directed downward medially, traversing the inter-costal muscle, middle portion of the right lung and cutting the big blood vessels therein.

"2. Contusion with abrasion, located at the base of the right ear.

Cause of death: Shock due to massive hemmorrhage resulting from stabbed wound."

At the trial, both accused vehemently denied having ever drunk tuba at the market place of Bo. Site in the afternoon of May 22, 1970.

Rogelio declared that at about 3:00 in the afternoon of that day, a commotion broke out at the market place when Fernando Magsayo, who was drunk, became unruly and quarrelsome. The barrio captain, in order to restore order, pacified Mag-sayo and conducted him to his house. But soon after, Magsayo returned to the market place. Still drunk, he approached Rogelio and, without warning, started pummeling the latter with fist blows. Hit on the left eye, Rogelio fell down and temporarily lost consciousness. When he regained his senses, he saw Magsayo already prostrate on the ground; and standing over him was Nicomedes with a dagger in his hand. When the barrio captain arrived at the scene of the incident, Nicomedes immediately surrendered his knife to him.

For his part, Nicomedes gave the following version of the incident: At about 4:00 that after-noon, while conversing with some friends at the market place, he saw Magsayo delivering fist blows on his brother Rogelio. Nicomedes immediately rushed to the aid of his brother, and while running, he snatched a knife tucked in the waist of a by-stander and with it he stabbed Magsayo. According to him, Magsayo was still punching his brother

when he inflicted the fatal wound. He stabbed the de-ceased only once, his purpose being merely to stop the latter's assault on his brother. When the bar-rio captain came, he surrendered the knife to him.

Appellants would have this Court totally discard the version of Luisa Sumanduran, arguing that, being the victim's widow, her testimony is necessarily biased and, therefore, unbelievable. We do not agree. Mere relationship of said wit-ness to the victim does not, by itself, impair her credibility. It has been repeatedly held that the testimony of an interested witness, while rightly subjected to careful scrutiny, should not be rejected on ground of bias alone; and if such testimony is reasonable and credible, as found by the trial court in the instant case, there is no reason for not accepting it.[3] Indeed, it would be unnatural for a person interested in seeing retribution exacted for the crime to im-pute the same to any persons other than those really responsible therefor.[4]

Besides, the version given by the victim's widow is strongly corroborated by the declarations of Sergio Bugtong, a disinterested witness. The trial court characterized the testimonies of these two eyewitnesses as positive and credible. It is a well-established rule that the findings of the trial court on matters affecting the credibility of witnesses are entitled to great weight and res-pect, in view of its opportunity to observe the deportment and manner of testifying of the witnesses during the trial, unless it plainly overlooked certain facts of substance which, if consi-dered, would alter the result of the case.

But while Nicomedes Ramo should be held responsible for the slaying of the deceased, we agree with the appellants' contention that the lower court erred in its exclusion that the killing was perpetrated with treachery. For treachery to exist, two conditions must concur: (1) that the means, method or manner of execution would ensure the offender's safety from any defensive or retaliatory act on the part of the victim and (2) that such means, method or manner of execution was deliberately and consciously chosen by the offender.[5] Thus, the fact that the attack on the victim was sudden does not per se constitute alevosia. It must further be shown that the aggressor consciously and deliberately adopted such method of attack in order to facilitate the commission of the crime without risk to himself.

In the case at bar, Nicomedes launched his assault against the victim after he saw his brother Rogelio engaged in a fight with the deceased. Undoubtedly, Nicomedes acted on an instinctive impulse to join hands with his brother in that fight. Un-der these circumstances, presence of treachery cannot be logically deduced, for in inflicting the fa-tal wound on the victim, he did not deliberate on the method of attack as would ensure the commission of the offense without risk to himself. Treachery being absent, Nicomedes Ramo is guilty only of homicide.

One last point. The trial court found Rogelio Ramo guilty of less serious physical injuries and sentenced him to imprisonment ranging from one (1) year to eight (8) months and one (1) day to two (2) years and four (4) months. The penalty imposed is clearly erro-neous because under paragraph 1, Article 265 of the Revised Penal Code, the offense of less serious physical injuries is punishable by arresto mayor.

WHEREFORE, Nicomedes Ramo being guilty of homicide, mitigated by voluntary surrender, is sentenced to suffer an indeterminate penalty ranging from six (6) years and one (1) day of prision correccional, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum; while Rogelio Ramo is sentences to two (2) months imprisonment. Nicomedes Ramo shall further indemnify the heirs of the deceased Fernando Magsayo in the sum of P30,000.00. No costs.

SO ORDERED.

Makasiar (Chairman), Abad Santos, Gutierrez, Jr., and Cuevas, JJ., concur.

Aquino, J., no part.

Concepcion, Jr., and Guerrero, JJ., on leave.

[1] Rollo, p. 6

[2] Rollo, p. 18

[3] US v. Mante, 27 Phil. 134; US v. Pagaduan, 37 Phil. 90

[4] People v. Reyes, 17 SCRA 309; People v. Tagaro, 7 SCRA 187.

[5] People v. Macariola, 120 SCRA 92; People v. Rhoda, 122 SCRA 909.

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