

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR BAYBAYON AND DOMINGO ATIBAGOS, ACCUSED-APPELLANTS.

G.R. NO. L-49856. April 03, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Victor Baybayon and Domingo Atibagos, appellants herein, were convicted by the Court of First Instance of Rizal of murder,[1] and were accordingly “sentenced to life imprisonment, to indemnify the heirs of the victim, Romulo Baterna, in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay proportionate costs.”[2]

Their conviction was founded on the facts hereinafter recited, which the Trial Court deemed to have been established beyond reasonable doubt by the evidence of the prosecution, chiefly, the testimony of two (2) eye-witnesses, namely: Julian Ronsairo -- owner of the sari-sari store in which the fatal incident originated[3] -- and Jesus Raymundo -- the victim’s companion at the time.[4]

In the evening in question, about 10 o’clock, May 15, 1971, Victor Baybayon and Domingo Atibagos, with some companions never identified, came to the store of Julian Ronsairo at No. 27 Tuazon Subdivision, Barangka, Marikina, Rizal. They brought with them a bottle of liquor and began drinking from it at that place which was then illuminated by a 40-watt fluorescent lamp. They drank the liquor while standing or leaning on the barandilla of the store since there were no chairs there.

After twenty (20) minutes or so, Romulo Baterna and Jesus Raymundo arrived at the store. They were asked by Baybayon to drink with him. Baterna declined, whereupon Baybayon poured liquor on Baterna’s and Raymundo’s faces. Baterna remonstrated with him, asking why he should be thus treated when they were both from the Visayas. Instead of replying Baybayon suddenly drew out a fan knife and exposed its blade. Baterna ran out, followed by Raymundo Baybayon and Atibagos followed them.

As fate would have it, Baterna slipped and fell to the ground, and was thus overtaken by Baybayon. The latter then bent over Baterna and stabbed him at the right side of the body. Though wounded, Baterna was able to rise and still run a short distance. He was however quickly overtaken again by Baybayon, and once more stabbed by the latter. At this point, Atibagos gave Baterna a fist blow at the back of the neck. Atibagos and Baybayon then fled. At this area in the street, where the assault on Baterna began in earnest and ended with his mortal wounding there were lighted street lamps that precluded the obscuration of that heinous occurrence by the darkness of night.

Raymundo brought the bleeding Baterna to his house and thence --- together with the victim’s mother, Juanita Luna,[5] and his brother, Danilo Baterna -- to Ortañez Hospital.

The autopsy performed by Dr. Mariano Cueva, Jr., medico-legal expert of the National Bureau of Investigation,[6] disclosed that Baterna had suffered abrasions on the left chest, left hip, left elbow and left leg and three (3) stab wounds, to wit:

“(1) 9 cms. long, elliptical shape, located at right posterior lumbar region of abdomen, 14cm. from posterior median line, 2 cms. above ilico crest, long axis oriented downward and medially, lower extremity sharp, upper extremity contused, edges clean-cut and widely gaping path of wound is directed forward upward and medially perforating along its track right kidney, ascending colon and mucocolon, partly severing inferior vena cava*; approximate depth 11 cms.

(2) 2.1 cm. long, elliptical shape, located at left forearm, posterior aspect, lower third, 22 cms. below elbow, long axis oriented almost vertically, upper extremity contused, lower extremity sharp, edges clean-cut and gaping directed forward upward and medially, taking an intra-muscular route between ulna and radius and producing a wound of EXIT, 2.5 cms. long, elliptical, left forearm, antero-medial aspect, upper third, 14 cms. below elbow.

(3) 8 cms. long, elliptical shape, located at right thigh, postero-lateral aspect, middle third, 19 cms. above right knee, long axis oriented downward and medially, lower extremity sharp, upper extremity contused, edges clean cut and widely gaping; directed upward medialward and slightly anteriorly, taking an intramuscular route to a depth of 7 cms.”

The cause of death was set down as, “Hemorrhage, severe, secondary to stab wound of abdomen.”[7] Dr. Cueva opined that the instrument of death could have been a sharp pointed, single-bladed implement such as a kitchen knife, or a fan knife otherwise known as a balisong.[8]

The only other witness of the Government was the mother of the deceased, Juanita Luna. Her testimony was offered to establish the actual and moral damages to which the prosecution believed she is entitled.[9]

The defense opted not to present any evidence. It chose to confine itself to drawing attention to what it contended to be the weakness of the proofs of the prosecution, adverting to certain alleged discrepancies in the testimony given by the witnesses of the prosecution. This thesis, however, failed of acceptance with the Trial Court, which found on the contrary that the evidence sufficed to prove the defendants’ guilt beyond reasonable doubt, and consequently sentenced them in the manner already stated.

Both the accused filed a notice of appeal to the Court of Appeals. The Clerk of the Trial Court however transmitted the records to this Court in view of the fact that the sentence imposed upon the accused was life imprisonment, a circumstance placing the case within the exclusive appellate jurisdiction of this Court.

The first issue raised, this, by Baybayon, is that as to him there is no proof of the corpus delicti. According to him, when Dr. Mariano Cueva gave evidence of the death of Baterna and the cause thereof, he (Baybayon) was yet at large, and the Court still had not acquired jurisdiction over him, either by his arrest or his voluntary submission to its authority; he could not therefore be bound by Dr. Cueva’s testimony and since the doctor never testified again, there was no proof, as to him, of Baterna’s death and the surrounding circumstances; hence, he should be acquitted on this account.

While obviously, the testimony of a medico-legal expert is preferred as to the mortal and other injuries suffered by the person slain in a case of murder, homicide or parricide, as well as the relevant circumstances attendant thereto, it is not the only competent evidence to prove those injuries, and the fact of death. The testimony of lay persons is equally admissible regarding the fact of the victim’s demise and the surrounding circumstances thereof, and is not excluded or reduced in probative value by the presence of expert forensic evidence. In this case, quite apart from the fact that the appellants do not at all advance the absurd theory that Baterna was not killed and is still alive, in truth, they admit that the victim died while on the way to the hospital,[10] the testimony of no less than three (3) prosecution witnesses -- two (2) eyewitnesses to the deadly assault against Baterna, and the latter’s own mother -- is that the appellants attacked and killed Baterna, and Baterna expired while being taken to the

hospital.

The really crucial question is whether or not the evidence presented before the Trial Court does indeed prove the appellants' guilt beyond reasonable doubt.

The appellants would make capital of what they take to be flaws in the state's proofs, i.e., the initial omission of witness Ronsairo to state that Baterna arrived at his store together with Jesus Raymundo, that Dr. Cueva could make no finding that the decedent's corpse exhibited any mark of a fist blow, and that Raymundo was running ahead of the appellants and so could not have seen what they had done to Baterna. These are minor defects which should not adversely affect but should rather enhance the witnesses's testimonial credit. The truth is that Ronsairo did not say that Baterna came to his store alone; he said that "some people *** passed by Victor Baybayon," and that Baybayon "poured liquor on one of them, Romulo Baterna." The truth, in any event, was that Ronsairo was really in a position to see and did in fact see Baybayon draw out a knife and run after Baterna, overtake him and stab him several times, as well as to observe that Baybayon's companion, Atibagos, also set out in pursuit of Baterna and strike the latter with his fist as the time. That the fist blow delivered by Atibagos left no perceptible mark on the victim is not proof that no such blow was struck. A fist blow that that does not land solidly, or is not powerful enough, would not be expected to leave a visible mark that would last for any significant length of time, as much being intimated by Dr. Cuevas himself. The fact is that no less than two (2) eyewitnesses deposed to Atigabos having directed a fist blow at the back of the neck of the victim, an act which, taken together with his having chased the victim, is persuasive manifestation of his concurrence with and desire to achieve Baybayon's evident objective of inflicting injury on Baterna. And as regards Raymundo's postulated inability to see what was taking place behind his back, his positive testimony is that he kept looking back while in flight, and this is how it happened that he saw the mortal assault on Baterna by Baybayon and Atibago.

Whatever inconsistencies there might be between the sworn statements of the two (2) eyewitnesses are clearly of minor nature which, as already pointed out, should not impair their intrinsic credibility but should rather erase any suspicion of their testimony being rehearsed.[11] What is vital is that their testimony as to the material occurrences and the identity of the parties involved are consistent with and mutually corroborative of each other.

The killing of Baterna was consummated with alevosia, qualifying the slaying to murder. When the first of stab wounds was inflicted on him he had fallen to the ground, was prostrate, in no position to offer any defense. The assault on him was continuous. Clearly the appellants had deliberately adopted a mode of attack which enabled them to consummate the crime without risk to themselves arising from any defense which their victim might make. Both appellants acted in concert, motivated by one single criminal impulse: to pursue and overtake Baterna and punish him for daring to refuse to drink with them. They both did run after the fleeing Baterna, and did attack him together after overtaking him. Thus, although Atibagos did no more than hit the victim with his fist, he is as liable as his co-conspirator, Baybayon, who fatally stabbed Baterna, in virtue of the time honored axiom that in a conspiracy the act of one is the act of all.

WHEREFORE, modified only to increase the indemnity awarded from P12,000.00 to P30,000.00,[12] the appealed Decision of the Trial Court is AFFIRMED in all other respects, with costs against the appellants.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] In Criminal Case No. 12541, assigned to Branch XI, presided over by Hon. Ricardo L. Pronove, Jr. (now Associate Justice of the Court of Appeals)

[2] Rollo, p. 7

[3] TSN, Feb. 4, 1976, pp. 3-27; March 26, 1976, pp. 4-17; April 5, 1976, pp. 4-30

[4] TSN, Nov. 19, 1976, pp. 3-27

[5] SEE also TSN, June 4, 1976, pp. 1-9

[6] Original record, pp. 2-3 (Exhs. A and A-1)

* Described by Dr. Cueva as the biggest vein of the heart

[7] Original record, p.2

[8] SEE TSN, July 9, 1975, pp. 3-44

[9] TSN, June 4, 1976, pp. 1-9

[10] Rollo, p. 36

[11] SEE *Peo. v. Pasco, et al.*, G.R. No. 68520, Jan. 22, 1990; *Peo. v. Cayago*, 158 SCRA 586 (1988); *Peo. v. Cabato*, 160 SCRA 98 (1988)

[12] SEE *Peo. v. Centeno*, 130 SCRA 198; *Peo. v. de la Fuente*, 126 SCRA 518

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