

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOVEL RABANES Y CRISTOBAL, ACCUSED-APPELLANT.

Ponente: PIZARRO, J.

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PIZARRO, J.:

This is an Appeal from the Decision[1] of the Regional Trial Court(RTC), Caloocan City, National Capital Judicial Region, Branch 128, convicting Novel Cristobal Rabanes(Accused-Appellant, for brevity) of Murder, for which he was sentenced to suffer the penalty of Reclusion Perpetua. The Accused-Appellant was charged with Murder under the following Information:[2]

That on or about the 30th day of September, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with a bladed weapon on the left vital portion of his body one Victor Isip, Sr., thereby inflicting upon the latter serious physical injuries which injuries eventually caused the victim's death.

Contrary to Law.

Upon arraignment, Accused-Appellant pleaded not guilty to the crime charged.[3]

The Facts:[4]

On September 30, 1998 at around 12:30 in the afternoon, the victim, Victor Isip, Sr.(Isip, for brevity), 59 years old, married, residing at 48 Balagtas St., Bagong Barrio, Caloocan City, was standing outside his house holding a fighting cock at an alley in Balagtas St. when the Accused-Appellant, armed with a double-bladed knife suddenly attacked and stabbed him on the left side of his body. Accused-Appellant thereafter fled the scene.

The Version of the Prosecution:

During the trial, the prosecution presented the following witnesses, namely: Victor Isip, Jr., Purita Isip, Salud Isip, Leonardo Soliven, PO2 Joel Aquino, and Dr. Jose Arnel Marquez.

Victor Isip, Jr., 28 years old, married, unemployed, and residing at 48 Balagtas St., Bagong Barrio, Caloocan City averred that the victim was his father. After having lunch on September 30, 1998, he went outside his house and witnessed the Accused-Appellant come out of an alley and stab his father on the left side of the body. He then ran and sought help from the Barangay so that he could bring his father to the hospital, where the latter expired.[5]

The next prosecution witness, Purita Isip, 59 years old, widow, employee, and a resident of 55 Balagtas St. Bagong Barrio, Caloocan City, testified that Isip was her brother-in-law. On her way home from work on September 30, 1998, as she was about to enter Ezequiel Alley from Balagtas St., she noticed that there were a lot of people. Having seen Isip(her brother-in-law) standing in the corner, she asked him, "Bato(Isip's alias) why are there a lot of people in the alley?" He replied, "Onyok(Victor Isip, Jr.'s alias) is there having a fight". She added that, as she was about to enter the alley, "Onyok" was running towards her and not too far behind was the

Accused-Appellant. As “Onyok” went pass her, the Accused-Appellant hit her right shoulder causing her to move to the side. Thereafter, she saw Accused-Appellant stab her brother-in-law, Isip. She identified in open-court Novel Rabanes as the assailant of her brother-in-law. She knows Accused-Appellant, as she is a tenant of the latter in his house.[6]

Salud Isip, 52 years old, a widow, a plastic scrapper, and a resident of 48 Balagtas St., Bagong Barrio, Caloocan City, testified that she is the wife of the victim, Isip, and was the one who brought him to the Manila Central University(MCU) Hospital where he was declared dead on arrival. She further said that due to the untoward incident, she incurred expenses amounting to fifty-seven thousand two hundred and twenty-nine pesos and ninety-five centavos(P57,229.95), broken down as follows: First, List of Expenses in a yellow sheet of paper with the total amount of fifty-seven thousand pesos(P57,000.00); Second, was the contract of Salud Isip and Funeraria St. Martin de Porres in the amount of twenty thousand pesos(P20,000.00); and, Lastly, the statement of account issued by MCU-FPT Medical Foundation Hospital in the amount of four thousand six hundred twenty-nine pesos and ninety-five centavos(P4,629.95). She also said that her husband was a driver and that he was earning seven hundred pesos(P700.00) to eight hundred pesos(P800.00) a day.[7]

The Barangay Secretary, Leonardo Soliven, 49 years old, married and is assigned at Barangay 143, Zone 13, District I, Bagong Barrio, Caloocan City, then took the witness stand. He testified that he recorded the stabbing incident that occurred on September 30, 1998. He said that it was Victor Isip, Jr. who reported such incident stating that, Accused-Appellant stabbed Victor Isip, Sr.[8]

The testimony of two(2) other prosecution witnesses, PO2 Joel Aquino and Dr. Jose Arnel Marquez, were stipulated upon during the trial, as follows: (1)That PO2 Aquino is a bonafide member of the Caloocan City Police assigned at Station Intelligence and Investigation Division; (2)That on October 9, 1998, he investigated the case of the alleged Murder involving the suspect Novel Rabanes, the victim being Victor Isip, Sr.; (3)That he took the statements of the witnesses: Purita Isip, Victor Isip, Jr. and Salud Isip; and, (4)That he prepared a referral letter dated October 9, 1998 referring the case against the Accused-Appellant to the Caloocan City Prosecutor’s office for preliminary investigation.[9]

The would-be testimony of Dr. Jose Arnel Marquez was likewise stipulated upon, as follows: (1)That on September 2, 1998, he conducted an autopsy upon the body of the deceased Victor Isip, Sr. at the St. Martin de Porres Funeral Homes by virtue of a request for autopsy filed by Barangay Chairman Jimmy Castro dated September 22, 1998 addressed to the PNP Crime Laboratory;[10] (2)That before the autopsy was conducted, he required the relatives to execute a consent for autopsy and identification of the dead body;[11] (3)That after the autopsy proper, he came out with a report No. M-1500-98 with the finding and conclusion that the cause of death is Hemorrhage(sic) as a result of a stab wound on the trunk;[12] (4)That he prepared a human sketch indicating therein the stab wound sustained by the deceased located at the left anterior coastal region;[13] and, (5)That after the autopsy, he issued a Death Certificate.[14]

Only the Accused-Appellant testified for his defense.

Novel Rabanes, 24 years old, married, driver, and a resident of No. 55 Balagtas St., Bagong Barrio, Caloocan City, averred that he had no participation in the stabbing of Isip, and that, during the time of the incident, he was on his way to work at Terona St., Bagong Barrio, Caloocan City, where he works as a driver of a junk shop and a plastic company. On cross-examination, he said that he learned of a commotion that happened that day and after the commotion, he went to work and stayed there until the following night. He added that his place of work is only three (3) blocks away from the incident, and that he had no proof of his employment in said junk shop. A month after the incident, he left their place and went to Aklan until 2001, the time that he was arrested.

After trial, the court a quo found the Accused-Appellant guilty and sentenced him to suffer the penalty of reclusion perpetua. Thus:

WHEREFORE, this Court finds the accused Novel Rabanes Y Cristobal Guilty of Murder, qualified by treachery, and he is hereby sentenced to Reclusion Perpetua. He is ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity and P25,000.00 as temperate damages.

The award for the loss of earning capacity of the deceased is DENIED, for lack of evidence.

Accused is credited in full of the preventive imprisonment suffered by him in the service of his sentence pursuant to Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[15]

The Issue:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF MURDER INSTEAD OF HOMICIDE ONLY, DESPITE THE ABSENCE OF TREACHERY IN THE KILLING OF THE VICTIM.

This Court's Ruling:

The appeal is partly meritorious. Accused-Appellant should be convicted of Homicide, not Murder.

After a meticulous review of the evidence, We find that the prosecution was not able to establish convincingly enough that treachery attended the stabbing that would have aggravated the killing to Murder.

We explain.

Treachery is constituted when two(2) conditions are met, namely: (1)The means, method or form of execution gives the person attacked no opportunity for self-defense or retaliation; and, (2)The means of execution were deliberately or consciously adopted.[16]

The fact that Accused-Appellant came from an alley and attacked Isip without any warning does not convince us that treachery should be considered as attendant, for the following reasons: Firstly, the Supreme Court had consistently held[17] that chance encounters, impulse killing or crimes committed at the spur of the moment or those that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack; Secondly, the suddenness of the attack, the infliction of the wound, and the fact the victim was unarmed does not render the attack as treacherous. To appreciate treachery, the means employed for the commission of the crime or the mode of attack must be shown to have been consciously or deliberately adopted by the accused to insure the consummation of the crime and at the same time eliminate or reduce the risk of retaliation from the intended victim;[18] Lastly, treachery is never presumed, it is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself.[19]

Scouring the records, We do not find any evidence that would tend to show that, prior to the stabbing, the Accused-Appellant resolved to commit the crime and that the death of Isip was the result of meditation, calculation, or reflection. Thus, treachery cannot be appreciated.[20] Absent any other qualifying circumstance, Accused-Appellant should, therefore, be convicted only of Homicide, not Murder,[21] and the penalty for such is reclusion temporal.[22]

Also, We respect the court a quo's finding that the prosecution's evidence is strong and its rejection of the palpably weak defense of denial and alibi interposed by Accused-Appellant. The Supreme Court has consistently

held[23] that the defense of alibi is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also, because it can be fabricated easily. Time and again, it has been ruled that alibi is the weakest of all defenses and cannot prevail over the positive identification of the accused by an eyewitness who had no untoward motive to falsely testify against him.[24] Thus, Accused-Appellant's claim that he was at work, cannot outweigh the positive identification of witnesses against him.[25] In this case, Accused-Appellant's alibi undeniably fails in view of the fact that no one in the junk shop or plastic company, where he claims to be working, can corroborate his claim that he is really employed in such company.

Lastly, applying the Indeterminate Sentence Law, absent any mitigating or aggravating circumstance, the maximum penalty imposable upon the Accused-Appellant is Reclusion Temporal in its medium period, while the minimum shall be taken from the penalty next lower in degree which is Prision Mayor in its maximum period.

WHEREFORE, premises considered, the Decision, dated September 7, 2004, of the Regional Trial Court in Criminal Case No. C-55653 is hereby AFFIRMED with MODIFICATION. As modified, the Accused-Appellant, Novel Rabanes, is found Guilty of Homicide and is hereby sentenced to suffer an indeterminate prison term ranging from ten(10) years and one(1) day of Prision Mayor, as minimum, to seventeen(17) years and four(4) months of Reclusion Temporal, as maximum. No costs.

SO ORDERED.

NORMANDIE B. PIZARRO Associate Justice

WE CONCUR:

REGALADO E. MAAMBONG[*]

Associate Justice

JOSE CATRAL MENDOZA[**] Associate Justice

[*] Vice J. Asuncion-Vicente, who is on leave, per Office Order No. 232-06-RTR, dated September 15, 2006.

[**] Vice J. Santiago-Lagman, who is on leave per Office Order No. 240-06-RTR, dated September 20, 2006.

[1] Penned by RTC Judge Thelma Canlas Trinidad-Pe Aguirre on September 7, 2004 in Criminal Case No. C-55653; Rollo, pp. 16-24.

[2] Rollo, p. 7.

[3] Records, p. 38.

[4] As culled from the records.

[5] TSN, January 22, 2002, p. 2-6.

[6] TSN, February 4, 2002, p. 3-14.

[7] TSN, August 5, 2002, pp. 3-7.

[8] TSN, July 14, 2003, p. 3-6.

[9] See Pre-trial Order dated June 17, 2002; Records, p. 71.

[10] See Exhibit "A"; Request for Laboratory Examination, dated September 22, 1998; Exhibits Folder, p.103.

[11] See Exhibit “B”; Certification of Identification and consent for Autopsy; Exhibits Folder, p.104.

[12] See Exhibit “C”; Medico-Legal Report No. M-1500-98, dated October 15, 1998; Exhibits Folder, p.105-106.

[13] Ibid.

[14] See Exhibit “E”; Certificate of Death; Exhibits Folder, p.107.

[15] Rollo, pp. 23-24.

[16] *Tuburan v. People*, 436 SCRA 327.

[17] *People v. Satorre*, 74 SCRA 106; *People v. Boduso*, 60 SCRA 60; *People v. Torejas*, 43 SCRA 158; *People v. Flores*, 43 SCRA 342; *Perez v. Court of Appeals*, 13 SCRA 444.

[18] *People v. Gonzalez, Jr.*, 359 SCRA 352.

[19] Ibid.

[20] Ibid.

[21] Article 249, Revised Penal Code. Homicide. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[22] Ibid.

[23] *People v. Batidor*, 303 SCRA 335; *People v. Antonio*, 303 SCRA 414.

[24] *People v. Morales*, 241 SCRA 267

[25] *People of the Philippines v. Ricafranca*, 323 SCRA 652.

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