

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO BANDOQUILLO, ACCUSED-APPELLANT.***G.R. No. L-31440. November 23, 1988*

Ponente: NARVASA, J.

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In the Court of First Instance of Negros Oriental,[1] Alfredo Bandoquillo @ Balodoy, a barrio police officer,[2] was charged with murder, qualified by evident premeditation and treachery; entered a plea of innocent on arraignment[3] and after due proceedings was found guilty beyond reasonable doubt of the felony and sentenced[4] to suffer the penalty of reclusion perpetua with all the accessory penalties of the law, and to pay the heirs of the deceased, Leoncio Saguban, the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.

The facts on which the judgment of conviction was founded are hereunder briefly set out.[5]

In the evening of February 3, 1968 a dance was held at a public hall in Sitio Lilihan, Barrio Mangoto, Pamplona, Negros Oriental, in honor of Barrio Captain Guillermo Esparcia. Among those invited were Aurelio Saguban and his children, Antonia, Marcelo and Leoncio. They brought along with them the portable stereophonic record-player owned by Aurelio, which the brothers, Marcelo and Leoncio, operated to provide the music for the dance. While the party was in progress, Franco Divinagracia asked Marcelo, who was then attending to the phonograph, to play some music of a slower beat. Marcelo said he would do so after he had finished with the "fast music." It seemed however that for some reason or other, Franco did not wish to wait. He picked up the arm of the record-player and then let it fall. Leoncio Saguban cried out, "Don't drop that, Frank." But Franco answered back angrily, "What if I will pulverize that, can I not pay?" Any further exchange of words, or possible altercation, was prevented by the intervention of a PC soldier, Asterio Esparcia, who pacified them. Music was again played on the phonograph and the dance resumed.

A short while afterwards, as Leoncio Saguban was verifying something about a sale of flowers, Franco Divinagracia struck him on his right shoulder with an empty bottle. Leoncio said, "The best thing to do now is, we should have this stereo phono sent home." He was heard by Balodoy Bandoquillo, the accused-appellant, who told him, "Go ahead, return that and you will see something will happen." Leoncio ignored Balodoy's statement. He told his father, brother and sister of the incident, and they all decided to go home with their phonograph forthwith.

As the Saguban family was walking home from the dance, accompanied by a certain Rolando Caballero, who was lighting the way with a "Petromax" lamp, Antonia glanced back and saw Alfredo Bandoquillo, Franco Divinagracia, Nicomedes Quisora and some others moving rapidly towards them. She cried out, "You run away because Balodoy Bandoquillo is after you!" Immediately the brothers ran into a sugar cane field by the side of the road and hid themselves. Their father, Aurelio Saguban, remained on the road, with Antonia, and Rolando Caballero. Balodoy Bandoquillo and his group soon reached them. Balodoy went up to Aurelio and asked him, "Where are your sons, Leoncio and Marcelo?" Aurelio answered, "They have gone already. They went home."

Balodoy said, "What gone home are you talking about," and thereupon slapped and boxed the old man. Antonia placed herself between her father and Balodoy. "Why are you doing this to my father when my father has not committed any wrong against you," she asked. At this point Leoncio came out of his hiding place and went to his father. All of a sudden Balodoy Bandoquillo stabbed Leoncio at the right side of his back. Leoncio dropped to the ground. As he was falling, he reached out to a man near him, a person by the name of Ernesto Raaging, and dragged him down with the result that Raaging was pinned down by Leoncio's weight. Then Leoncio and Ernesto were helped up by Barrio Captain Esparcia and a man named Olimpio Ramirez. As Leoncio was being raised to his feet, he made a cryptic remark, "Doy, you just make good because I am already wounded."

Leoncio was quickly brought to the Siliman University Medical Center, but efforts to save his life proved unavailing. He expired at about 6:30 o'clock the following morning due -- according to Dr. Alfredo E. Corpus,[6] who had operated on him -- to adrenal failure caused by the knife wound. Dr. Corpus declared that the wound had penetrated the thoraco-lumbar region and the abdominal cavity, perforating the ascending colon and causing a massive hematoma therein and in the retroperitoneal space.[7]

Leoncio was survived by his wife, Emilia Benitez and five (5) children who were then 14, 11, 7, 5 and 2 years old. Emilia testified to these facts, and as to her wounded feelings and her anxieties concerning her support and that of her children, as well as to her claim for attorney's fees, and medical, funeral and other expenses.[8]

Appellant Bandoquillo denied having slain the deceased, and claimed that it was Ernesto Raaging who had killed Leoncio Saguban with a knife thrust while wrestling with him on the ground. His testimony was that the altercation at the dance hall had been between Franco Divinagracia and Leoncio, not between Leoncio and him; that it was not he but Franco Divinagracia who had uttered the statement that if the record-player was taken home, "something will happen".[9] He sought to substantiate this theory by the testimony of Olimpio Ramirez and Barangay Captain Guillermo Esparcia.

Olimpio Ramirez testified that he went to the scene of the crime in response to a woman's cries for help and came upon Leoncio Saguban and Ernesto Raaging wrestling on the ground; that he had helped pull them apart, had seen Raaging make a thrusting motion, and had then noticed that Leoncio had a wound at the right side of his body. He also stated that Raaging had warned him not to testify against him, if he did not wish to be the next victim.[10] Serious flaws in his testimony were however exposed by cross-examination. He admitted that he had not seen Raaging holding any weapon at the time; he could not say that Leoncio was not already wounded when he saw him lying on the ground with Raaging; he had, it seems, concluded that Leoncio and Raaging were struggling with each other simply because both were on the ground, one on top of the other; indeed, as he was helping Raaging up, the latter had told him he had been bumped by Leoncio.[11]

Barangay Captain Esparcia also testified to a similar version of the occurrence. Additionally, he said that on seeing Leoncio wounded, he had advised the father and sister to bring him to the hospital; that Raaging had run away, he had followed but had been unable to talk to him because he saw that Raaging was quarreling with his wife; that when he finally spoke to Raaging the following morning, the latter had pleaded for his help, but he had instead asked Raaging to go with him to the municipio because he would file the complaint corresponding to the crime; that Ernesto had refused and then gone home; that he had told Pamplona Municipal Judge Uldarico Ramirez that Raaging had stabbed Leoncio Saguban.[12] He admitted on cross-examination that Balodoy Bandoquillo was a relative by affinity, a fact he had earlier denied; that he had not seen the stabbing, nor any weapon of Raaging; that he had, concluded that Raaging had stabbed Leoncio from information given by Balodoy Bandoquillo and Olimpio Ramirez.[13]

The defense version was belied by the State's rebuttal witnesses. PC Corporal Asterio Esparcia declared that he

had gone to the place of the incident and had seen Leoncio already wounded; that he had asked who had stabbed him and Leoncio had replied, "Balodoy Bandoquillo;" that he had not however arrested Balodoy then because Leoncio appeared to him to be in serious condition and had to be taken to the hospital, and what is more, he had been cowed into inaction by the menacing words and mien of Bandoquillo and his companions.[14] Judge Ramirez denied ever having been told by Barangay Captain Esparcia that it was Raaging who had killed Leoncio Saguban, and could not recall whether that statement had been made by Esparcia during the preliminary investigation.[15] And Ernesto Raaging, Leoncio's slayer according to the defense, categorically denied the facts testified to by Bandoquillo and his witnesses relative to his supposed acts on the occasion in question. He declared that he had indeed been dragged down by Leoncio Saguban as the latter was falling, but denied, specifically, having any weapon at the time, much less having thrust it at the deceased; he denied, too, that he had quarreled with his wife, that Barangay Captain Esparcia had accused him of the crime and that he had then said, "Captain, help me," or that indeed the former had gone to his house; he furthermore denied having any rancor against Leoncio allegedly because of his dismissal from his employment at the Benguet Consolidated Mining Company on complaint of Leoncio and his sister, and that in truth he had never been dismissed from his job, and was still working with the company at the time he took the witness stand.[16]

Quite apart from the doctrine of long standing that because a trial court enjoys the distinct advantage of observing the witnesses and the evidence personally and directly, its factual findings consequently carry with them a strong presumption of correctness and will not be modified or reversed on appeal absent any persuasive showing that it has overlooked certain facts substantially affecting its conclusions,[17] we are convinced by our own study of the case of the correctness of the analysis and assessment of the proofs by the Court a quo. We agree that the evidence of the prosecution suffices to prove the commission of the crime by the appellant beyond reasonable doubt, and that the theory of the facts proffered by the defense is undeserving of credit, being inconsistent and improbable. The Trial Court's findings will thus be sustained in their entirety.

As to the appellant's argument that the credibility of the State's chief witness, Aurelio Saguban, is seriously impaired by the circumstance of his being the victim's father, relationship to a party has never been recognized as an adverse factor in determining either the credibility of a witness or -- subject only to well-recognized exceptions[18] none of which is here present -- the admissibility of testimony. At most, closeness of relationship to a party, or bias, may indicate the need for a little more caution in the assessment of a witness' testimony, but is not necessarily a negative element which should be taken as diminishing the credit otherwise to be accorded thereto.[19] As shown by the record of the case at bar, the evidence given by the father, brother and sister of the deceased is positive, clear, entirely in accord with human experience, exhibiting no sign of exaggeration or inconsistencies, and unshaken by rigorous and extensive cross-examination. In combination with the testimony of the physician and the other witnesses who were called to the witness stand by the prosecution, such evidence more than suffices to establish that the victim, Leoncio Saguban, met his death at the hands of the appellant.

However, the proofs do not, in our view, warrant affirming the appellant's conviction for murder. Contrary to the finding of the Trial Court, said proofs do not sufficiently demonstrate that the killing of Leoncio Saguban was attended by treachery. What they do show is that the deceased and his brother, Marcelo, were forewarned by their sister, Antonia, that the appellant was after them, and this prompted them to flee and hide in the sugar cane field. It was when Leoncio left his hiding place to come to the aid of his father, who was being assaulted by the appellant, that the latter turned on him and dealt him the fatal stab wound. In these circumstances treachery cannot be assumed, even from the suddenness of the attack, because it can hardly be said that Leoncio went to his parent's aid oblivious of the fact that in doing so he was exposing himself to attack from the appellant. As was well said in *People v. Ardisa*: [20]

" **. The qualifying circumstance of treachery may not be simply deduced from presumption as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit."

While the information also charged evident premeditation, the Trial Court, in holding that murder (qualified by treachery) was committed without aggravating or mitigating circumstances, in effect found either that such circumstance of evident premeditation did not exist or that it was absorbed by the qualifying circumstance of treachery. At any rate, we find that the evidence also fails to indicate with any positivity the presence of said aggravating circumstance. The utterance of threats prior to the commission of the crime, absent the supervention of an appreciable period of time between their making and the commission of the offense sufficient to afford the culprit opportunity to either plan or prepare for its execution, does not constitute evident premeditation.[21]

There being no clear or acceptable evidence of the existence of any circumstance that would qualify the killing of Leoncio Saguban to murder, the Trial Court erred in convicting the appellant of such offense. The appellant is guilty only of homicide committed without either aggravating or mitigating circumstances, for which the appropriate penalty is reclusion temporal in its medium period.[22] Taking account of the Indeterminate Sentence Law, the appellant should be as he is hereby sentenced to a penalty of six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. The civil indemnity imposed should, however, be increased from the P12,000.00 decreed by the Court a quo, to P30,000.00, in accordance with established and consistently applied precedent. The appealed decision of the Trial Court is, therefore, hereby MODIFIED accordingly.

SO ORDERED.

Cruz, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Branch III. Originally, one Nicomedes Quisora was charged with the crime of killing Leoncio Saguban together with Bandoquillo before the Municipal Court of Pamplona; but after preliminary investigation, the accusation against Quisora was dropped for lack of evidence (Original record, pp. 29, 41-44). Thus, the information was filed only against Bandoquillo on March 20, 1968.

[2] Appointed by Barangay Captain Guillermo Esparcia. TSN, March 13, 1969, pp. 133 et seq

[3] Original record, p. 47

[4] By judgment dated September 8, 1969, rendered by Hon. Cipriano Vamenta, Jr., Presiding Judge of Branch III of the CFI, Negros Oriental (Rollo, pp. 4-18)

[5] These were culled from the evidence given by Marcelo Saguban (TSN, Nov. 22, 1968, pp. 4-13), Antonia Saguban Riasol (TSN, March 4, 1969, pp. 19-43); Rolando Caballero (TSN, March 7, 1969, pp. 74-93); Aurelio Saguban (TSN, March 7, 1969, pp. 94-98); Jacobo Mananquil (TSN, Feb. 14, 1969, pp. 25-33).

[6] A surgeon, and resident physician of the Center

[7] TSN, Feb. 14, 1969, pp. 18-25

[8] TSN, March 10, 1969, pp. 49-55

[9] TSN, March 13, 1969, pp. 133-141

[10] TSN, March 11, 1969, pp. 64-91

[11] Id., pp. 75-76

[12] *Id.*, pp. 93-103

[13] *Id.*, p. 128

[14] TSN, March 14, 1969, p. 175

[15] *Id.*, pp. 182-183

[16] *Id.*, pp. 178-181

[17] *Peo. v. Royeras*, 130 SCRA 259, 265; *Peo. v. Lopez*, 132 SCRA 188, 193; *Peo. v. Martinez*, 144 SCRA 303, 315; *Peo. v. Adones*, 144 SCRA 364; *Peo. v. Patog*, 144 SCRA 429

[18] E.g., Section 20, Rule 130 of the Rules provides, among others, that (1) a spouse can not be examined for or against the other without the latter's consent, except in a civil case by one against the other or in a criminal case for a crime committed by one against the other; and (2) a descendant cannot in a criminal case be compelled to testify against his parents and ascendants.

[19] *Peo. v. Valera*, 5 SCRA 910; *Peo. v. Bautista*, 6 SCRA 322; *Peo. v. Villalba*, 17 SCRA 948

[20] 55 SCRA 245, 258

[21] *Peo. v. Amoroso*, 5 Phil. 466; *Peo. v. Mendoza*, 100 Phil. 811

[22] I.e., fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months

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