

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMIN BESANA, ACCUSED-APPELLANT.*G.R. No. 102722. March 17, 1993*

Ponente: CAMPOS, JR., J.

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This is an appeal from the decision[*] of the Regional Trial Court, Sixth Judicial Region, Branch 30, Iloilo City, convicting the accused of the crime of Murder and sentencing him to suffer the penalty of Reclusion Perpetua and the accessory penalties provided for by law; to pay the heirs of Ananias Peñaflor, Jr. as indemnity for death the amount of P50,000.00; to reimburse the expenses of said heirs for the wake, funeral and burial of the deceased in the aggregate sum of P22,118.00, and to pay the costs.

The antecedents show that on May 5, 1989, at around 3:30 o'clock in the afternoon, in Barotac Nuevo, Iloilo, a group of five (5) girls and five (5) boys, including the deceased, Ananias Peñaflor, Jr., was waiting for a bus ride to Anilao, their hometown, when accused Armin Besana came, looked at each one of them and then left, only to return a little later with two companions, his brothers Antonio and Victorino Besana.[1] Without any warning, the three brothers lunged at the five (5) boys and started boxing them while Ananias Peñaflor, Jr. tried to escape.[2] He was, however, overtaken by Armin Besana who immediately stabbed him with a knife. The two other brothers, Antonio and Victorino, likewise chased Ananias and took turns in stabbing him.[3] After which, they fled, leaving Ananias sprawled on the ground in a pool of his own blood. Ananias expired even before he reached the hospital. The medico-legal certificate[4] showed that the cause of his death was massive externo-internal hemorrhage due to stab wounds.

For the death of Ananias Peñaflor, Jr., an Information for Murder was filed against accused Armin Besana charging him as follows:

"That on or about May 5, 1989, in the municipality of Barotac Nuevo, province of Iloilo, Philippines and within the jurisdiction of this Court, the above-named accused armed with a knife, conspiring, confederating together and mutually helping with (sic) one another with ANTONIO BESANA alias "Tonette" and VICTORINO BESANA alias "Ne Boy", also armed with knives and are still at large, with intent to kill, evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack and stab ANANIAS PEÑAFLOR, JR. with the weapons they were then provided, inflicting upon him lacerated-stab wounds on the different parts of his body which caused his death.

CONTRARY TO LAW."[5]

Only accused-appellant Armin Besana was arrested and charged because his two other brothers remain at large and no preliminary investigation has been conducted to determine their involvement in the stabbing of the victim.

Upon arraignment, accused-appellant pleaded not guilty to the crime charged. The trial court, however, ruled against him, hence, this appeal.

Accused-appellant's only defense is alibi. He proffers, that he was playing mahjong in a place some two hundred (200) meters away from the scene of the crime at the time of the incident. He further avers that he was mistaken for his younger brother, Victorino Besana, who, he believes, is the one responsible for the killing of Ananias.

We do not agree.

In *People vs. Antud*,^[6] We held that courts have always looked upon the defense of alibi with suspicion and always receive it with caution, not only because it is inherently weak and unreliable but also because of its easy fabrication. For alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. The accused must show that he was at some other place where the crime was committed at the time of its commission. Appellant must be able to demonstrate by convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time that it was committed. The foregoing two-fold requisites of alibi have not been met, in the case at bar. The place where accused-appellant was allegedly playing mahjong was only two hundred (200) meters away from the plaza where the stabbing incident took place. Accused-appellant himself admitted that he can negotiate the distance between the two places in three minutes, on foot at that.^[7] Hence, there was no physical impossibility for him to be at the scene of the crime at the time when Ananias was stabbed to death.

Besides, accused-appellant's defense of alibi cannot prevail over his positive identification by the prosecution witness, Jose Ausmolo, as one of the perpetrators of the crime. Jose Ausmolo was himself among those boxed by the three (3) Besana brothers. He positively saw Armin, Victorino and Antonio, all surnamed Besana, attacking the five (5) unsuspecting boys who were waiting for their ride home, and later on, ganging up on Ananias as the latter tried to run away.^[8] The incident happened in broad daylight, at around three thirty o'clock in the afternoon. It was, therefore, highly improbable, if not outrightly impossible, for Jose to have mistaken the accused-appellant for his younger brother, Victorino.

It is true that only Jose Ausmolo identified the accused as among the three (3) assailants of Ananias Peñaflor, Jr. It is, however, a well-entrenched rule that testimonies of witnesses are weighed and not numbered, and that the testimony of only one witness, if clear and convincing, is enough to convict. We find nothing in Jose Ausmolo's clear and straightforward testimony which will raise doubt in the mind of this Court that indeed, accused-appellant is guilty as charged.

Further, this Court accords great respect to the factual findings of the trial judge, who has the opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies. The witnesses reveal much when they testify that is not reflected in the transcript, which only records what they said but not how they said it.^[9] The appellate court goes only by the sterile record. By contrast, the trial court can discern the nuances of tone or voice or flush or blanch of face or dart of eyes or forthright gaze, that will draw the line between fact and prevarication.^[10] It is for this reason that the trial judge's factual findings are generally not disturbed by the appellate court unless they are found to be clearly biased or arbitrary. They are not so in this case.

As aptly held by the trial court, there was no evident premeditation that attended the killing of Ananias. For the said qualifying circumstance to be appreciated, the following requisites must concur and be proven as convincingly as the crime itself,^[11] to wit: (a) the time when the offenders determined to commit the crime; (b) an act manifestly indicating that they had clung to their determination; and (c) a sufficient interval of time between the determination and execution of the crime to allow them to reflect upon the consequences of their act.^[12] Here, all that the prosecution tried to show was that the accused, prior to the stabbing incident, approached the group of unsuspecting boys and girls, the deceased among them, looked at each one of them and

then left. After which, he returned with two other men, who turned out to be his brothers, and attacked and boxed the victim and his companions. This is not the evident premeditation contemplated by law. The plan to kill the victim must be evident and not merely suspected, or contemplated mentally without external acts.

There was, however, abuse of superior strength which qualified the killing to murder. The three (3) Besana brothers helped each other in stabbing Ananias who was unarmed and alone, after he separated himself from his group. The fact that the accused Armin Besana called on his two other brothers before attacking the victim clearly shows their deliberate intent to take advantage of their combined strength to perpetrate the crime with impunity.

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED in toto.
SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[*] Penned by Judge Jesus G. Alensagay.

[1] TSN, November 28, 1989, pp. 222-225.

[2] Ibid., p. 227.

[3] Ibid., pp. 227, 228, 229.

[4] Exhibit "A", Original Records, p. 4.

[5] Original Records, p. 1.

[6] G.R. No. 95684, October 27, 1992, citing *People vs. Rafallo, et al.*, 86 Phil. 22 (1950), *People vs. Bondoc*, 85 Phil. 545 (1950), *People vs. Cinco, et al.*, 67 Phil. 196 (1939); *People vs. Mendoza*, G.R. No. 97430, June 26, 1992; *People vs. Talla, et al.*, 181 SCRA 133 (1990).

[7] TSN, January 16, 1990, p. 289.

[8] TSN, November 28, 1989, pp. 228-230.

[9] *People vs. Yadao, et al.*, G.R. Nos. 72991-92, November 26, 1992.

[10] *People vs. Arevalo, et al.*, G.R. No. 93406, October 7, 1992, citing *People vs. Francisco*, 182 SCRA 305 (1990).

[11] *People vs. Sarense, et al.*, G.R. No. 97433, October 20, 1992.

[12] *People vs. Yadao*, supra, note 3, citing R. AQUINO, *THE REVISED PENAL CODE* 325 (1976 Ed.).

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