

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMERVITO REGOROZA, ACCUSED-APPELLANT.*G.R. No. 104500. May 06, 1994*

Ponente: CRUZ, J.

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It was shortly before one o'clock in the morning of April 28, 1987, at Barangay Poblacion in Iligan City. Pablo Balandó, a barangay tanod, was watching Alejandro Unabia and a woman companion, who were seated on the pavement some 30 meters away. If they were conversing, he did not hear them. It was none of his concern, anyway. The scene was perfectly peaceful and it seemed that all was well with the world.

Then the men came. There were six of them. One of them approached and suddenly stabbed Unabia who, as he ran, was pursued by the other four. They also took turns in stabbing him. The sixth man stayed behind and restrained Balandó with a knife pointed at his abdomen. Balandó saw everything that happened because of the light from a mercury lamp and a fluorescent tube nearby. He also had a flashlight which he had used as the men passed by him. He could not tell, however, what happened to the woman.[1]

Later that same morning, Balandó was investigated by P/Sgt. Daniel N. Espiritu. When asked if a suspect then in police custody was the man who restrained him with a knife, he declared in Tagalog: "Hindi ang taong ito, at saka mas matangkad at ang buhok ay hindi ganitong kulot at ang style ay seven-seven." [2] He was referring to Regoroza, whom he subsequently identified at the station [3] and later during the trial [4] as the man who first stabbed Unabia. Balandó's sworn statement during the investigation was reduced to writing. [5]

Dr. Regino A. Gaité, the NBI medico-legal officer who autopsied Unabia's corpse, testified that he found twelve stab wounds on the body, six of which were at the back and fatal. [6] From the location of the wounds, he concluded that the assailants were behind the victim at the time of the stabbing. [7]

To provide a possible motive for the killing, the prosecution also presented Juanita Closas, Unabia's stepmother. She declared that at around 10:00 o'clock of April 27, 1987, her husband and Unabia were at their yard drinking with Regoroza's wife. Regoroza arrived about an hour later and told his wife to go home, but she refused. He went home angry, and after a while his wife followed him. [8]

Regoroza denied any participation in the stabbing and claimed that at the time of the commission of the offense, he was sleeping in the house of Guillerma Cagula, with Ronnie and Bert Cagula. He and his wife had already separated long before because of her excessive drinking. He said that he met Balandó for the first time when they were both being investigated at the police station, where Balandó failed to identify him as the killer of Unabia. [9]

The Cagulas were not presented to confirm Regoroza's alibi. Instead, Cpl. Antonio Lubang, an investigator at the homicide section of the Iligan police, testified that when he questioned Balandó on May 2, 1987, the latter was not able to identify Regoroza as the killer. The investigation, however, was not taken down as required by standard police procedure. The defense also did not present CSU Victor Pagaling, who was allegedly present during the

investigation.[10]

Another witness called to discredit Balandó was Guillermo Barimbad, a security guard detailed at the Uy Building near the place where the stabbing occurred. He said that the place was dark because the mercury lamp was already flickering and the fluorescent light was only 20 watts. In fact, he had to use his flashlight to see the blood traces on the ground. He added that Balandó himself admitted not recognizing the assailants.[11]

On November 8, 1991, Judge Federico V. Noel of the Regional Trial Court of Iligan City, Branch II, rendered his decision after taking over from retired Judge Tago M. Bantuas, who had conducted the trial. The dispositive portion found Regoroza guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua. He was also ordered to indemnify the heirs of Alejandro Unabia in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Regoroza now stresses in his brief that Balandó could not have witnessed the killing, let alone see the face of the assailants. Not only was the place dark but he himself was preoccupied with the man who was pointing a knife at his abdomen. To emphasize the inadequacy of the light in the area at that time, the defense argues that Balandó had to use his flashlight to see the face of Regoroza as the latter passed by him.

By so arguing, the defense in effect admits that Balandó did use his flashlight on Regoroza's face and so identified him. That is a damaging admission. In any case, it appears that the place of the incident was well-lit by the fluorescent tube and the mercury lamp; it was the spot where Balandó was stationed that was not. That is why he had to use his flashlight when the six men passed by before they stabbed Unabia.

The man who threatened him with a knife did so after the stabbing, to prevent him from interfering. It is therefore wrong to assume that Balandó was not able to see the entire occurrence because he was gripped with fear over the knife at his abdomen. The threat on his life came only after he witnessed the killing and it did not last long because all the six men fled soon afterwards.

It is also argued that Balandó was merely persuaded by the police to identify Regoroza as the killer, but there is no evidence to support this conjecture. On the contrary, Balandó's testimony was clear and positive and does not appear to have been vitiated by any improper pressure or personal motive of harassment or revenge.

Judge Noel did not commit any reversible error in rendering judgment in the case although he did not preside at the trial and merely relied on the transcript of stenographic notes in weighing the testimonial evidence. We have held often enough that a decision is not necessarily flawed by the circumstance that the judge who wrote it did not himself conduct the trial. Thus:

It is also contended that the decision itself lacks credibility because the judge who wrote it had not heard the testimonies of the prosecution witnesses. This circumstance alone would not enfeeble his decision. After all, he had the full record before him, including the transcript of stenographic notes, which he could study. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial. (*People vs. Sadiangabay*, 220 SCRA 551, 555 [1993], citing *Ayco vs. Fernandez*, 195 SCRA 328 [1991]).

Balandó's description of Regoroza at the police station, which he confirmed at the trial, was especially telling compared to Cpl. Lubang's testimony of an alleged investigation he made which had no testimonial or documentary support.

Against the positive identification of an impartial witness whose testimony has not been successfully challenged, Regoroza's uncorroborated defense of denial and alibi must perforce fail. The absence and silence of Ronnie and Bert Cagula, who were supposed to be with him at the time of the killing, have only weakened Regoroza's plea.

The defense has not even questioned Balandó's motive short of saying, without proof, that he was persuaded by the police to perjure himself.

Treachery qualified the killing to murder. Balandó testified that Unabia was sitting when stabbed by Regoroza from behind. The victim was caught unaware and his attackers were able to perpetrate the offense without risk to themselves of any defense the victim might otherwise have made. Unabia tried to flee but they kept stabbing him until he fell and died. There was abuse of superior strength, but this cannot be appreciated as an independent aggravating circumstance because it is deemed absorbed in *alevosia*.^[12]

WHEREFORE, the appeal is DISMISSED and the appealed decision dated November 8, 1991, is AFFIRMED, with costs against the appellant. It is so ordered.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] TSN, December 9, 1987, pp. 9-11.

[2] TSN, January 13, 1988, p. 22.

[3] Sworn statement of Pablo Balandó dated April 28, 1987, taken by P/Sgt. Daniel N. Espiritu, Records, pp. 7 and 7-A.

[4] TSN, January 13, 1988, p. 23.

[5] Records, pp. 7 and 7-A.

[6] TSN, May 25, 1988, p. 3.

[7] *Ibid*.

[8] *Id.*, pp. 8-9.

[9] TSN, October 10, 1988, pp. 2-10.

[10] TSN, September 7, 1988, pp. 5-6.

[11] TSN, July 6, 1988, pp. 3-11.

[12] *People v. Jamino*, 3 Phil. 102; *People v. Abletes*, 58 SCRA 241.

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