PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIUS KINOK ALIAS “YOS BLA-AN” AND TAPANTE SALIGAN ALIAS “TAPANTE BLA-AN”, ACCUSED-APPELLANTS.

G.R. No. 104629. November 13, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Appeal from the decision of the Regional Trial Court, Branch 19, Davao del Sur,[1] in Criminal Case No. 3(90), "People vs. Julius Kinok alias "Yos Bla-an" and Tapante Saligan alias "Tapante Bla-an," convicting both accused of murder and sentencing them to reclusion perpetua with accessory penalties.

The Amended Information dated February 26, 1990 filed against the accused reads:

> "That on or about the 24[th] day of September, 1989 in the Municipality of Kiblawan, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring, confederating together, and mutually helping one another, and armed with a firearm, did, then and there willfully, unlawfully and feloniously, attack, assault and wound therewith William Aguipo, in the vital part of his body, inflicting upon him gunshot wound, with treachery and evident premeditation, said accused having inflicted said wound while William Aguipo is asleep, and as a result thereof, said William Aguipo died instantly.
>
> CONTRARY TO LAW.[2]

Upon arraignment, the two accused pleaded NOT GUILTY. Thereafter, trial on the merits ensued.

The theory of the prosecution, as aptly stated by the Solicitor General in the appellee's brief, is reproduced hereunder:

> "After taking supper at around 8:00 o'clock in the evening of September 23, 1989, Luz Aguipo, together with four of her five children, went upstairs in her house at Kimlawis, Kiblawan, Davao del Sur, while her husband, William Aguipo proceeded inside the store in the first floor and slept therein (pp. 4-6, tsn, May 30, 1990). At around 8:30 o'clock of the same evening, Luz heard two persons calling out to buy rise (p. 6, id). When William later called out to Luz whether she had change for P100.00, she answered that she had none (id.). She went down the house and saw accused Julius Kinok and Tapante Saligan. The duo were thus unable to buy the rice as the couple had no change (id.). The two accused then asked if the couple had corn grits (p.7, id.). They replied that there was none available. Thereafter, the two accused requested William to accompany them to the store owned by Roger Miñoza (id.). William acceded (id.).
>
> Between 8:30 and 9:00 o'clock in the same evening, William returned to their store and proceeded to sleep (p. 8, id.). Thereupon, Luz went back upstairs, listened to a radio program until sign-off, and thereafter slept at around midnight (id.).
>
> At around 12:30 o'clock past midnight, Luz was awakened by a muffled gunburst. She immediately got up, looked over the window and saw the two accused both holding guns which were pointed at where her husband, William, was later found dead (pp. 8-9, id.). She was able to identify the two as the moon and stars were

shinning brightly and besides there was a pile of woods and bamboos (`bagacay') which were burning around eight (8) meters away from where the two accused were (p. 9, id.). Not long after, the two accused ran away (id.). Thereafter, Luz went back to lie down on her bed (p.10, id.). She could not go back to sleep because she was scared that the two would come back to strafe their house and kill them all (pp. 10, 16-17, id.).

While all these were going on, Ronel Mande, the 13-year old nephew of the couple, who was sleeping in the first floor with the other child, Rommel Aguipo (on the other side of the wall of split bamboos from where William was sleeping), was himself awakened by the noise coming from the horse and pigs (pp. 2-5, tsn, May 11, 1990). When he tried to look at the place where the horse and pigs were, he saw the two accused both holding firearms which were directed and poked at the walling of the store where William was sleeping (pp. 4-6, id.). He saw both accused clearly since the moon was shining brightly and the pile of woods he had previously set fire earlier in the evening was burning just around eight (8) meters away from where the accused were (id.). Upon noticing that both accused had pointed their guns toward the store where his uncle William was sleeping, he tried to look at the wooden railings (id.). As he was looking, he heard a muffled gunburst (id.). Thereupon, he ducked and lay down on the floor (id.). Feeling very much scared, he covered himself with a blanket (p. 7, id.).

About one and a half hours later, still being unable to sleep, Ronel noticed that his clothes were wet (pp. 8-12, id.). Thinking that the children upstairs had urinated, he went upstairs and woke his Aunt Luz complaining that he was wet with urine (id.). Luz check who of the children urinated, and finding no one, she lighted the lump to check why he was wet and, then discovered that it was blood (pp. 8, 13, id.; p. 10, tsn, May 30, 1990). She found out that the blood came from William whose wounds were oozing with blood (pp. 8-9, 13, tsn, May 11, 1990; pp. 10-11, tsn, May 30, 1990). She noticed that William had two wounds, one on the right side of the body and another on the left wrist (p. 11, tsn, May 30, 1990). She started crying, joined by Ronel (p. 9, tsn, May 11, 1990; p. 11, tsn, May 30, 1990). While Luz was crying, Ronel told her, ' Auntie, I saw the persons who shot him' (pp. 11-12, tsn, May 30, 1990). She warned him not to tell any one because the accused might come back and retaliate against them (p. 16, tsn, May 11, 1990).

Luz, then, brought the dead body of her husband outside of the store and wrapped it with a mat (p. 12, tsn, May 30, 1990). Thereupon, she informed her parents-in-law (id.). At about 4:30 o'clock in the afternoon, they proceeded to the municipal hall of Kiblawan and subsequently to the Gregoria Matas District Hospital for an autopsy of the cadaver (id.). The examining physician, Dr. Reynaldo Villanueva, found, as revealed in his Outside Patient's Record Card, that:

'PRE:

(1)

entrance wound, L post lateral wrist 0.5 cm. diameter

(2)

exit wound L ant-medial wrist 1 cm. diam. everted

(3)

entrance wound R ant-level of 8[th] rib abdomen R upper quadrant just below the R cortal margin 1.5 cm. inverted c no exit

Cause of Death: CPA 2° to gunshot wound'

(Outside Patient's Record Card, Exhibit `A', Records, p. 71; tsn, March 14, 1990, pp. 3, 5-6)

Luz had four policemen friends in Kiblawan who told her to reveal the identities of the culprits (pp. 27-28, tsn, May 30, 1990). She told them that she would do so at the proper time (p. 28, id.).

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After the burial of her husband on October 9, 1989, she went to the Kiblawan Police Station and executed a sworn statement to support her complaint against the two accused (pp. 27-28, id.; p. 7, Sworn Statement, Exhibit `1', Records)."[3]

Neither of the two accused took the witness stand. In their defense, only Alfredo Canacan and Flaviana Solo testified.

Alfredo Canacan, a resident and barangay councilman of Kimlawis, testified that at about 5:00 o'clock in the morning of September 24, 1989, he fetched water from a well. While passing by the Aguipos' place, he heard some cries and being curious, he entered their house and there he saw the body of William Aguipo lying on the floor wrapped by a blanket wet with blood. He noticed that when Luz saw the forearm of her husband, she shouted, "giwak-giwak, gikitkit si William," which means, "William was eaten by the witch". When he told her that William might have been shot to death, she disagreed, saying she did not see any person nor hear any gunshot the night before.[4]

Flaviana Solo, barangay captain of Kimlawis, corroborated Alfredo Canacan's testimony[5] and further declared that she interrogated Ronel Mande. When she asked him about his uncle's condition, he answered that his uncle was trembling and he (Ronel) believed the incident was just a nightmare.[6]

After hearing, the trial court rendered a decision, the dispositive portion of which reads:

> "WHEREFORE, premises considered and in view of the foregoing, this court find the accused Julius Kinok alias Yos Bla-an and Tapante Saligan alias Tapante Bla-an guilty of the crime of murder as charged. They are hereby ordered to suffer imprisonment with a penalty of reclusion perpetua (Life sentence) each with the accessory penalties of the law. It appearing that there is no payment of the filing and docket fees, this Court cannot pronounce any civil liability, for jurisdiction over the same is acquired only from the moment of its payment.
>
> SO ORDERED."[7]

In this appeal, appellants ascribe to the trial court ten interrelated errors which may be summed up as follows: (1) in finding that the evidence for the prosecution has established the identity of the killers; (2) in concluding that delay on the part of Luz Aguipo in naming the assailants did not weaken her testimony; (3) in holding that Ronel Mande, although the victim's nephew, is a credible witness; and (4) in convicting the appellants despite the fact that no ill motive on their part has been established by the prosecution.

Incidentally, during the pendency of this appeal, or on July 24, 1994, appellant Tapante Saligan died due to cardio respiratory arrest while confined at the National Bilibid Prison in Muntinlupa.[8] Hence, in a Resolution dated March 8, 1995, this Court dismissed the appeal with respect to him for being moot and academic.[9]

After a meticulous review of the entire records of this case, we find the appeal bereft of merit.

Ronel Mande, prosecution witness, positively identified appellants. His testimony in point is quoted as follows:

> "DIRECT EXAMINATION
>
> ATTY. CARPENTERO:
>
> Q
>
> Now, while you were sleeping that evening, what unusual incident have you noticed if any?
>
> A

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When I heard the sound coming from the horse and I noticed that the pigs were noisy, I was awakened and tried to look at the place where the horse and pigs were, I saw the two accused Yos Bla-an and Tapante Bla-an bringing firearms to the place where my uncle William Aguipo was sleeping.

x x x

Q

How where you able to see this when it was in the evening?

A

Because the moon was shining very bright and besides I was burning file of wood in front of the road.

COURT:

Q

Why where you burning those woods?

A

I burned in that place because there were so many garbage, your honor, so I have to burn them.

ATTY. CARPENTERO:

Q

How far was that burning fire to the place where the accused where?

A

About 8 meters.

x x x

Q

Seeing the two holding firearms pointed to the place where your uncle William was sleeping, according to you, what did you do next?

A

When I noticed that they were poking their firearms towards the store where my uncle was sleeping, I tried to look at the wooden railings and as I looked, I heard gun burst.

Q

What kind of burst was that?

A

A muffled burst.

Q

Hearing the muffled burst at that time, what did you do?

A

I ducked and laid down towards the floor?

Q

Why did you drop towards the floor?

A

Because I was afraid.

x x x

Q

Now, after wrapping yourself with the blanket and knowing that Luz Aguipo was upstairs, what did you do next?

A

I did nothing but to lie down covering myself with a blanket because I was very much afraid."[10]

Likewise, Luz Aguipo positively identified the appellants as the perpetrators of the crime, thus:

"DIRECT EXAMINATION

ATTY. CARPENTERO:

Q

While you were sleeping, what unusual incident happened?

A

After I went to sleep that was about 12:30 o'clock past midnight, I was surprised when I heard a gunshot, so I immediately rose up from the bed.

Q

What kind of burst did you hear?

A

A gun burst with a dull sound or in the local dialect "bungol nga boto".

Q

Where did that gun burst emanate?

A

From the downstairs of our house.

Q

As you heard a gun burst, what did you do, if any?

A.

When I heard a gun burst, I immediately opened the window of our house.

Q

What did you notice as you opened the window of your house?

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A

When I opened the window of our house, I saw two person, the two accused, holding a gun.

x x x

Q

What was their respective positions when you saw the accused for the first time after opening the window?

A

When I opened the window of our house and looked over the window, I saw the two accused pointing their guns at the place where my husband was killed.

Q

How were you able to recognize the two since it was past 12:30 o'clock midnight going to dawn?

A

I recognized the two accused through the illumination coming from the moon and stars because they were shining very brightly, and besides there was a pile of wood and "bagacay" burned by my son that early evening and because of the continuos blowing of the wind, these pile of woods and bamboos were lighting.

Q

How far was the burning woods and bamboos from the place where the two accused were?

A

More or less 8 meters.[11]

Instead of controverting the above testimonies and defending themselves, appellants merely chose to remain silent. They relied solely on the testimonies of their barriomates who claimed that Luz Aguipo and Ronel Mande did not inform them of the names of the perpetrators.

In criminal cases, the prosecution bears the onus to prove beyond reasonable doubt not only the commission of the crime but likewise to establish, with the same quantum of proof, the identity of the person or persons responsible therefor.[12] This burden of proof does not shift to the defense but remains in the prosecution throughout the trial.[13] However, when the prosecution has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the court of the truth of the allegations in the information or has established a prima facie case against the accused, the burden of evidence shifts to the accused making it incumbent upon him to adduce evidence in order to meet and nullify, if not to overthrow, that prima facie case.[14]

As we held in People v. Resano:[15]

> "x x x [The witness], of course, has a right not to do so and his failure and/or refusal to testify shall not in any manner prejudice or be taken against him. But when the prosecution has already established a prima facie case, more so when the offense charged is grave and sufficient enough to send the accused behind bars for life or may even warrant the imposition of the supreme penalty of death, then in order to meet and destroy the effects of said prima facie case and so as to shift the burden of producing further evidence to the prosecution, the party making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond reasonable doubt. In such a situation, it may be necessary for the accused to have a complete destruction of the prosecution's prima facie case, that he take the

stand since no hardship will in any way be imposed upon him nor advantage be taken of him."

Appellants' unexplainable silence, in the midst of the overwhelming evidence established by the prosecution against them, leads to no other conclusion than that they are guilty as charged.

Anent Luz Aguipo's delay in reporting the incident to the proper authorities, we agree with the Solicitor General that such delay, which covered only sixteen (16) days, was satisfactorily explained by her.

Luz testified that she feared for her life as well as her family. She was also convinced that appellants would flee to the mountains and might no longer be apprehended. Likewise, in her barangay, many residents have been killed in the past. Although the culprits were identified, the barangay officials would usually "fix the cases" because they themselves are afraid of the people in the mountains. Similarly, she did not immediately bring the matter to the police authorities because she was then busy attending to the burial arrangements of her husband.[16] With these things in her mind, compounded by the traumatic shock of finding herself suddenly a widow with five children to support, Luz could not be expected to immediately take the proper action.

Next, appellants assail Ronel's credibility on the ground that he is a nephew of Luz Aguipo and her husband who were then sending him to school. Mere relationship by itself does not give rise to the presumption of bias or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of a witness. Antithetically, a witness' relationship to a victim of the crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[17] Indeed, at 14, Ronel's act of accusing his barriomates of such a serious crime even strengthens the veracity of his testimony.

Appellants also vigorously contend that since there was no ill motive on their part against the victim, then they should be acquitted. Suffice it to state that the prosecution witnesses positively identified them as the malefactors. It is a settled principle requiring minimal discussion that motive is not essential for conviction when there is no doubt as to the identity of the accused.[18]

The aggravating circumstance of treachery, which qualified the killing to murder, was properly appreciated by the trial court. The two conditions of treachery concurred, namely, (a) that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate, and (b) that such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. Appellants, then fully armed, shot the victim to death while he was asleep and therefore, could not have put up any kind of defense.[19] The Information also alleges the presence of evident premeditation in the commission of the crime. For evident premeditation to be appreciated, the evidence for the prosecution must establish with equal certainty and clearness as the criminal act itself[20] all its elements, to wit: (1) the time the offender determined to commit the crime; (2) an act indicating that the offender had clung to his determination; and (3) sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender to reflect upon the consequences of his act.[21] A perusal of the records of this case reveals that not one of these elements was sufficiently established by the prosecution. The trial court, therefore, correctly disregarded the same.

Under Article 248[22] of the Revised Penal Code, then the applicable provision when the crime was committed, murder is punishable by reclusion temporal in its maximum period to death. It appearing that no other modifying circumstances attended the commission of the crime, the trial court correctly imposed on the appellants the penalty of reclusion perpetua.[23]

However, the trial court erred in not holding that appellants are civilly liable. Luz Aguipo is claiming actual

damages. She testified that she spent no less than P10,000.00 during the burial of her husband; and P10,000.00 as attorney's fees and other expenses. However, this Court can only award such damages if supported by receipts.[24] We scoured the records for any receipt in support of her claim but found none.

The heirs, however, are entitled to a fixed sum representing civil indemnity for the death of William Aguipo. Per prevailing jurisprudence, death indemnity is fixed in the sum of P50,000.00.[25] This kind of civil indemnity is separate and distinct from other forms of indemnity for damages[26] and is automatically awarded without need of further proof other than the fact of death and that the accused is responsible therefor.[27]

Luz Aguipo is likewise praying for moral damages. Such damages recoverable in criminal offenses resulting in physical injuries or the victim's death must be supported by factual basis [28] or sufficient proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock and similar injury.[29] Luz Aguipo testified that she was in grief because of the death of her husband and encountered so many difficulties thereafter.[30] She thus asks for the amount of P50,000.00 as moral damages. Obviously, she is entitled to moral damages and the amount she prays for is deemed proper and justified.

Furthermore, because of the presence of the qualifying aggravating circumstance of treachery, exemplary damages, now fixed at P25,000.00, is also recoverable pursuant to Article 2230 of the Civil Code. It is now well-settled that with respect to the civil aspect of a criminal case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages.[31]

WHEREFORE, the decision of the trial court is AFFIRMED, subject to the MODIFICATION that appellant Julius Kinok alias "Yos Bla-an" is ORDERED to pay the heirs of the victim P50,000 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages. Cost against appellant Julius Kinok alyas "Yos Bla-an".

SO ORDERED.

Melo, (Chairman),Vitug, Panganiban, and Carpio, JJ., concur.

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[1] Presided by Judge Dominador F. Carillo.

[2] Rollo, p. 6.

[3] Id., pp. 176-181.

[4] TSN, August 15, 1990, pp. 4-8.

[5] TSN, September 3, 1990, pp. 5-10.

[6] Ibid., p. 8

[7] Rollo, p. 24.

[8] Ibid., pp. 125-127.

[9] Ibid., p. 128 a.

[10] TSN, May 11, 1990, pp. 4-7.

[11] TSN, May 30, 1990, pp 8-9.

[12] People v. Niño, 290 SCRA 155; People of the Philippines v. Bernie Faustino, G.R. No. 129220, September 6,

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2000.

[13] Bautista v. Sarmiento, G.R. No. L-45137, September 23, 1985; 138 SCRA 587, p. 593.

[14]

[15]

[16] TSN, May 30, 1990, pp. 28-30.

[17] People v. Macuha, 310 SCRA 14 (1999).

[18] People v. Cabrera, 241 SCRA 28.

[19] People v. Caisip, 290 SCRA 451.

[20] People v. Sison, 312 SCRA 792 (1999)

[21] People v. Altabano, 317 SCRA 708 (1999).

[22] Article 248 of the Revised Penal code was later amended by R.A. No. 7659, which took effect on 31 December 1993 (see People v. Simon, 234 SCRA 555 [1994]. The penalty for murder is now reclusion perpetua to death.

[23] See People v. Muñoz, 170 SCRA 107 (1989); People v. De Mesa, 188 SCRA 48 (1990).

[24] Macalino v. People, G.R. No. 121802, September 7, 2000; People v. Salcedo, 273 SCRA 473 [1997].

[25] People v. Espanola, 271 SCRA 689, April 18, 1997 (citing People v. Teehankee, 249 SCRA 54).

[26] Briñas v. People, 125 SCRA 687, November 25, 1983.

[27] People v. Ortega, Jr., 276 SCRA 166; People v. Salcedo, 273 SCRA 473.

[28] People v. Balano, 272 SCRA 782.

[29] People v. Zamora, 278 SCRA 60.

[30] TSN, May 30, 1990, p. 13.

[31] People v. Catubig, G.R. No. 137842, August 23, 2001, cited in People v. Dionisio, G.R. No. 137676, September 27, 2001.

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