

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VALTONY JAVIER Y JAVELOSA, ACCUSED-APPELLANT.

G.R. No. 104729. February 03, 1994

Ponente: PUNO, J.

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PUNO, J.:

In an Information,[1] dated December 6, 1990, VALTONY JAVIER Y JAVELOSA was charged with MURDER before the Regional Trial Court of Malabon,[2] allegedly committed as follows:

"That on or about December 3, 1990, in Navotas, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said gun one ERICK (sic) ABANTE Y CASTRO, thereby inflicting upon the victim gunshot wounds which caused his immediate death.

"Contrary to law."

Upon arraignment, accused-appellant pleaded not guilty and underwent trial.

The case for the prosecution was established mainly thru the testimony of Rolando Dadua. He testified that on the eve of December 3, 1990, he was with the victim, Eric Abante, an 18-year old fisherman, and two (2) other fishermen, namely: Reynaldo Garcia and a certain Joey. They were at the premises of the Navotas Fishery Port from six o'clock until ten o'clock in the evening. They passed by J & A Kitchenette likewise located within the fish port. They stayed within the vicinity for one (1) hour. At around ten o'clock (10:00 P.M.), Reynaldo went inside the restaurant after seeing a certain Dennis Garcia.[3]

It appears that Reynaldo Garcia and Dennis Garcia were at odds with each other. Soon, a commotion ensued as Dennis and Reynaldo exchanged fist blows. Somebody shouted: "Pulis, pulis!" The group broke up, including the protagonists Dennis and Reynaldo.

Eric Abante and Rolando Dadua were, however, left behind by their companions. Accused-appellant Valtony Javier, and one Ponciano Enderina who identified himself as a fish port policeman,[4] arrived at the scene.[5] Suddenly, accused-appellant approached Dadua and immediately struck the latter's head with a gun. Dadua slumped on the ground. In turn Enderina, hit Abante. Instinctively and with a bleeding nose, Abante ran and embraced a certain Boyet who happened to be at the scene. Thereafter, accused-appellant called Abante. When he came, accused-appellant kicked and hit him with his gun. Eric fell on the ground and was helped to his feet by Enderina. Accused-appellant then turned his rage on Dadua and started hitting him again. His fury still unspent, accused-appellant went back to Abante and beat him.

Dadua and Abante were taken to the Port Security Division (PSD) headquarters located at the Navotas Fishing Complex. Even on their way to the PSD headquarters, accused-appellant continued mauling Dadua and Abante. They reached the headquarters at around eleven o'clock (11:00 P.M.) in the evening. The two were brought to the

desk officer of the PSD and made to stand in front of the desk. Enderina guarded them while accused-appellant left momentarily. There were five (5) other people at the headquarters. The place was also well-lighted.[6] When accused-appellant returned, he approached Abante. With his hands up, Abante begged that he had not done anything wrong. His plea fell on deaf ears. Accused-appellant poked his gun on Eric's face and said "I will kill you." Immediately thereafter, he fired his gun on Abante. Abante died instantly. He was shot between his eyes (Exhibit "D-1").

Accused-appellant then poked his gun at the terrified Dadua. Fortunately, somebody in the headquarters parried his hand. Enderina uttered: "ganyan nga, magkamatay na kayo." Soon after, accused-appellant and Enderina left. For two (2) minutes, Dadua embraced Abante's lifeless body sprawled on the floor. The people present at the scene could only stare. Later, a member of the PSD brought them to a hospital for treatment. Abante, however, was a dead on arrival case."[7]

The same evening, Patrolman Henry Bustamante, Pfc. Melchor Domingo, Pfc. Rogelio Ilumbaring and Pfc. Antonio Desabille, of the Navotas Police Station, were dispatched to investigate the incident. They proceeded to the "Pagamutang Bayan ng Malabon" where the body of the victim was brought. Bustamante testified that he was informed that the assailant was a PSD member. They went to the PSD headquarters but the employees thereat did not divulge any information as to the identity of the assailant.[8] They were uncooperative.[9]

The following day, the investigators returned to the Administrative Office of the PSD for a probable line-up of suspects and to secure photo files. They were, however, informed by a certain Vivas that the suspect would be surrendered to them.[10]

On December 5, 1990, accused-appellant was turned over to the Navotas Police Station. At the police station, a police line-up, consisting of six (6) men, including accused-appellant, was formed. Dadua was then ushered to the investigation room. Without hesitation, he identified accused-appellant as the assailant.[11]

Another witness, Bienvenido Cruz, testified that he saw the mauling incident at the premises of the fish port. He was, approximately, five (5) arms-length from the scene. He heard Abante plead: "wala akong kasalanan" after the accused-appellant had hit Abante with a gun. Bienvenido followed them to the headquarters. At the headquarters, he peeped through the glass window. The door of the headquarters was open. He then saw the accused leave. When the accused returned, he drew his gun and, at the same time, said: "Papatayin kita." A single shot was fired. He took cover for safety. Thereafter, he saw Dadua embracing Abante. He left without telling anyone of the incident.

Accused-appellant, a casual employee (harbor operations assistant) assigned at the Harbor Operations Division, Navotas Fishing Port Complex, denied the accusation against him. He claimed he reported for work at four o'clock in the afternoon of December 3, 1990. As an inspector, he monitored the arrival and departure of vessels at the fish port.

At 10:30 P.M., he reported to his office which is located at the second floor or above the PSD headquarters. He left at around 10:45 P.M. using his motorcycle. He then proceeded to Pier 1. From Pier 1 he and a certain Jun Bano went to Pier 2. On their way to Pier 2, they met a co-employee William Villalobos. Villalobos informed them that a person was shot. On his way back to the office, accused-appellant learned that he was being accused as the gun-wielder. As he was ascending the stairs leading to his office, somebody exclaimed: "Hayan, PSD yan, kasama yan." This allegedly frightened him. He talked to his wife who was also working at the fish port. His wife, however, had no knowledge of the incident. Fearful of harm, he did not pass through the stairs leading to the PSD office. He used a different passage and left the place.

Upon advice of a friend of his who is a member of Capcom central district, he went to the Sikatuna police headquarters. The following morning, he requested his friend to pass by his house to bring clothes for him. On December 5, 1990, however, he was brought to the Navotas Police Station. He was identified as the assailant by Dadua from the police line-up. He claimed, however, that the police coached Dadua to identify him.

William Villalobos corroborated the testimony of accused-appellant that the latter went to their office at around 10:30 in the evening and then left at 10:45 P.M. At 11:00 P.M., Villalobos went downstairs. He was already outside the premises of their office when he saw a commotion in front of their office. He proceeded to Pier 2 which is 200 meters from their office. Along the way, he met accused-appellant. He notified the latter that somebody was shot. He claimed, however that he did not hear any gunshot.

On January 17, 1992, the lower court rendered judgment finding accused-appellant guilty as charged. The dispositive portion of the decision^[12] reads:

"WHEREFORE, premises considered, judgment is hereby rendered, finding accused Valtony Javier y Javelosa guilty beyond reasonable doubt of Murder. Said accused is hereby accordingly sentenced, in the absence of mitigating and aggravating circumstance, to life imprisonment or RECLUSION PERPETUA. He is also ordered to pay P50,000.00 for the loss of the victim's life and in addition thereto, he is also ordered to pay the heirs of his victim Eric Abante the following:

- a) P50,325.00 for the expenses related to the death and burial of the victim;
- b) P50,000.00 as moral damages;
- c) P20,000.00 plus P500.00 per Court Appearance as and for attorney's fees.

Costs against the accused.

"SO ORDERED,"

Accused-appellant, represented by the Public Attorney's Office, appealed to this Court alleging:

I

THE COURT A QUO ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE THEORY OF THE PROSECUTION AND IN DISREGARDING THAT OF THE DEFENSE.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR MURDER DESPITE THE UTTER FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

III

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT WAS INDEED THE ASSAILANT, THE COURT A QUO ERRED IN CONSIDERING THE CRIME AS MURDER THE QUALIFYING CIRCUMSTANCES OF TREACHERY OR EVIDENT PREMEDITATION NOT HAVING BEEN PROVEN DURING THE TRIAL.

The main question in the gruesome murder of Eric Abante is whether or not the accused-appellant was correctly identified as the killer by the eyewitness, Rolando Dadua.

We are convinced that the guilt of the accused-appellant had been established beyond reasonable doubt.

Accused-appellant was positively identified by prosecution witness Dadua as the culprit. He testified as follows:

ATTY. NALDA:

Q:

What happened when you were already there at the headquarters, if any?

A:

We were then standing with your (sic) hands raised and Javier left and after a short while he returned still holding his gun pointing to my companion Eric Abante whom he said: "Papatayin kita, sabay putok nabulagta po and kasama ko." (sic)

Q:

How long after you arrived with (sic) the headquarters after that occurred?

A:

About twenty (20) minutes.

Q:

In between that twenty (20) minutes was there anything that transpired?

A:

We were just standing.

Q:

Nobody else talked to you?

A:

None, sir.

(TSN, August 19, 1991, pp. 23-24)

Dadua had ample opportunity to see the accused-appellant at close range from the time he and his companion, Abante, were mauled by the said accused-appellant until the shooting incident. The probability that the witness committed a mistake as to the true identity of the culprit is nil. Indeed, it is difficult for Dadua to forget the face of the accused-appellant who mercilessly shot his friend in his presence. It ought to be mentioned that the accused-appellant almost shot Dadua also were it not for the intervention of a companion of the said accused-appellant.

The lower court correctly gave greater weight to the, testimony of Rolando Dadua. We agree with its findings, viz:

"Witness Dadua narrated clearly and convincingly, the incident starting from the arrival of Javier and Enderina (sic) up to the time Javier shot and killed Abante. Dadua distinctively recalled how Javier poked his gun at Abante, shooting and hitting the latter in the face. Dadua even quoted what Enderina said to Javier after the latter shot Abante: "Magkamatayan na kayo, sir." (sic) Notwithstanding extensive and intensive cross-examination, Dadua stood by his testimony and did not falter. Dadua also positively identified Javier in Court and before that the line-up formed by the police as the killer of Abante.

"Against this very clear and convincing testimony of Rolando Dadua, which found corroboration from the declaration of another witness, denials and alibi cannot prevail."

The testimony of a witness, mentioning the minutiae of an incident that could not be easily concocted, such as the murder in the case at bar, deserves credence for it indicates sincerity and truthfulness in the narration of events.[13]

Accused-appellant insists that he is innocent. His conduct after the incident, however, negates his pretension. He hurriedly and surreptitiously left his office despite the strong accusation against him. We note that the Port Security Division is located at the ground floor of his office. The PSD members are in-charge of keeping peace and order within the fish port. His allegation that he left for fear of his life does not inspire credence. Except for his say-so, no empirical evidence was introduced to justify his alleged fear. Flight is an indicium of guilt.

Accused-appellant's defense consists of alibi. We have consistently ruled that the defense of alibi cannot prevail over the positive identification of the accused by an eyewitness who had no improper motive to falsely testify.[14] Rolando Dadua does not know the accused prior to the incident and vice-versa. We do not believe that a witness would impute a crime to the accused if there is no stamp of truth to it. The lower court believed the prosecution witness. We, too, believe him. Accused-appellant's defense of alibi is further tattered by his admission that he was within the vicinity when the crime was committed. Again, we reiterate the rule that factual findings of the trial court must be accorded respect as it was able to observe the demeanor of witnesses while testifying in court.[15]

Finally, we hold that the killing of the victim was qualified by treachery.

The records show that the victim was already weak and defenseless as a result of the physical beatings employed by accused-appellant. The victim was also unarmed. Before he was shot, both his hands were raised. He was in a state of utter surrender. He was begging for his life. He was shot at close range. He did not have an iota of chance to defend himself. Clearly, his shooting was characterized by treachery and qualified the crime to murder.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. In the absence of any mitigating or aggravating circumstance, the proper penalty is RECLUSION PERPETUA. In line with the present policy of this Court, the accused is ordered to pay the heirs of the victim P50,000.00, as civil indemnity.[16] There being no aggravating circumstance, the award of exemplary damages is deleted.[17] The award of moral damages in the amount of P50,000.00 is affirmed. The sum of P50,325.00 representing expenses related to death and burial of the victim, is reduced to P35,800.00.[18] No pronouncement as to attorney's fees,

IN VIEW WHEREOF, the decision appealed from is MODIFIED. Accused-appellant is found guilty of Murder qualified by treachery and meted the penalty of reclusion perpetua and is ordered to indemnify the heirs of the victim, Eric Abante the following: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; and P35,000.00 as expenses related to the death and burial of the victim. Costs against the accused-appellant. SO ORDERED.

Narvasa, C.J., Padilla, and Regalado, JJ., concur.
Nocon, J., on leave.

[1] Original Records, p. 1.

[2] Case docketed as Criminal Case No. 9775.

[3] TSN, August 19, 1991, pp. 7-9.

[4] TSN, March 18, 1981, p. 37.

[5] TSN, August 12, 1991, pp. 11-12.

[6] TSN, August 19, 1991, pp. 31-32.

[7] TSN, March 18, 1991, pp. 35-42.

[8] TSN, March 18, 1991, pp. 5-8.

[9] See Exhibit "G"; Original records, p. 129.

[10] TSN, March 18, 1991, p. 8.

[11] TSN, March 18, 1991, pp. 9-10.

[12] Penned by Hon. Benjamin M. Aquino, Jr.

[13] People vs. Banez, G.R. No. 95456, September 18, 1992, 214 SCRA 109.

[14] People vs. Pomentel, G.R. No. 87781, December 11, 1992, 216 SCRA 375.

[15] People vs. Moreno, Jr. G.R. No. 97408-09, September 2, 1992, 213 SCRA 450.

[16] People vs. Antonio Danque y Dando, G.R. No. 107978, November 19, 1993.

[17] In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party (Art. 2230, New Civil Code).

[18] See Exhibit "A"; Original records, p. 112.

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