

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAMSON SUPLITO, ALIAS “SAMMY,” AND ELY AMARO Y BALBUENA
(ACQUITTED), ACCUSED-APPELLANT.**

G.R. No. 104944. September 16, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Masbate, Masbate, Branch 45, finding accused-appellant Samson Suplito guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Felino B. Castillo, in the amount of P30,000.00 and to pay the costs. The case against the other accused, Ely Amaro y Balbuena, was dismissed on the ground of reasonable doubt.

The information against accused-appellant Samson Suplito and his co-accused, Ely Amaro y Balbuena, alleged[2]-

That on or about October 26, 1986, in the afternoon thereof, at Barangay Luy-a, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with a .45 caliber pistol, one Felino Castillo, hitting the latter at the posterior base of the skull, thereby inflicting wounds which directly caused his instantaneous death.

CONTRARY TO LAW.

Upon arraignment, both accused entered a plea of not guilty, whereupon trial on the merits ensued.

The prosecution presented two alleged eyewitnesses, Salve C. Chavez and Edwin Raquim, and three other witnesses, Dr. Emilio C. Quemi, PC Sgt. Jose Bajas and Isabelo Castillo, in support of its case.

Salve C. Chavez, a public school teacher at the Malubi Elementary School in Aroroy, Masbate, testified that at about 1:30 p.m. on October 26, 1986, she was on the front seat of the passenger jeepney “Gilbert” which was then parked in front of a coffee shop owned by one Mr. Lumbes at Barangay Luy-a, Aroroy, Masbate. The jeepney was bound for the poblacion of Aroroy. While thus waiting for the jeepney to leave, Chavez saw a truck, which was loaded with bundles of slippers and about 12 boxes of “mallorca” bottles, park in front of the house of one Japson. The truck backed up towards the jeepney, on which Chavez was, and stopped when it was about 3 to 4 meters from the jeepney. The driver of the truck alighted and went to the rear of the truck to unload its cargoes. Chavez said she then saw accused-appellant walk toward the driver of the truck and tap the latter’s left shoulder with his right hand as he poked a .45 caliber pistol at the back of the driver’s head. As the driver, who was then unloading the cargoes from his truck, moved his head to the left side, the gun slipped below his left ear. Whereupon, accused-appellant shot the driver and then walked away carrying his gun. Chavez cried for help and ran to the nearby house of one Boy Andeza where she learned from Edwin Raquim that the victim was Felino B. Castillo, brother of PC Sgt. Froilan B. Castillo. She looked out of the window and saw the victim lying on the

pavement with his fingers still moving. She then went back to the passenger jeepney. She knew accused-appellant because the latter had been her brother's friend for the past 11 years. Earlier, she gave a sworn statement (Exh. F) to PC Sgt. Jose Bajar.[3]

Edwin Raquim testified that he took his lunch in Boy Andeza's house on October 26, 1986. He left Andeza's house at about 1:30 p.m. to unload 10 boxes of "mallorca" bottles from a truck owned by his brother-in-law, Carmelito Discaya, and driven by the victim Felino B. Castillo. As instructed by Mrs. Vicenta Discaya, the victim started to unload the cargoes. While the victim was at the rear portion of the truck, Raquim saw accused-appellant poke a .45 caliber pistol at the back of the victim's head and shoot him. The victim fell on the pavement and accused-appellant walked away. Raquim then went back to the house of Andeza where he met Salve C. Chavez. He asked her who the gunman was and she identified him to be the accused-appellant. On the other hand, Raquim told Chavez that the victim was Felino B. Castillo. Raquim said he took the victim to the Funeraria Ricimar in Masbate.[4]

Dr. Emilio C. Quemi, Medical Specialist III of Masbate Provincial Hospital, conducted a post-mortem examination of the cadaver on October 27, 1986. His findings are set forth in a post mortem report (Exh. A) as follows:

FINDINGS

1. Body is in a state of rigor mortis
2. Gunshot wounds at the posterior base of skull with a .45 slug recovered from the brain.

CAUSE OF DEATH

1. Injury to the brain caused by a gunshot wound.

Dr. Quemi testified that, based on the fact that the point of entry of the gunshot wound was at the back of the victim's head, he concluded that the assailant was behind the victim. The projectile penetrated the middle part of the victim's brain by about 3 inches. From the trajectory of the slug and the nature of the wound, he concluded that the victim was shot at a close range and that there was no possibility of self-infliction. He recovered a .45 slug (Exh. B) embedded in the victim's brain. The certificate of death (Exh. C) gave the immediate cause of death of the victim as "injury to the brain caused by a gunshot wound." [5]

PC Sgt. Jose Bajar, a member of the Integrated National Police (INP), testified that on October 27, 1986, he investigated accused Ely Amaro y Balbuena who gave an affidavit (Exh. E) in the local dialect which was later translated into English (Exh. 3). Accused Amaro was investigated without the assistance of counsel.[6]

Isabelo Castillo, father of the victim, testified that on October 26, 1986, at about 9:00 p.m., he was informed by his son, PC Sgt. Froilan B. Castillo, about the death of his other son, Felino B. Castillo, at Luy-a, Aroroy, Masbate. The victim was employed as a driver-mechanic of the Discaya family. PC Sgt. Froilan B. Castillo, who was assigned at the 270th Philippine Constabulary Company/INP in Bariis, Aroroy, Masbate, told him that the assailant was accused-appellant. Isabelo Castillo went to the Funeraria Ricimar and saw the deceased wrapped in an old mat with a big gunshot wound on his nape. He stated that the possible motive for killing his son was the near collision three months before between the passenger jeepney "Gilbert" owned by Jesus Amaro of Luy-a, Aroroy, Masbate, and the truck owned by the Discaya family and driven by the victim. Accused-appellant was the brother-in-law of Jesus Amaro. Castillo also testified that he spent P3,000.00 for the coffin, P275.00 for the burial and P15,000.00 for the wake.[7]

The prosecution also presented the affidavit (Exh. E) of Ely Amaro y Balbuena who stated therein that at about 2:00 p.m. of October 26, 1986, he was asked by accused-appellant to take him to the police station in Masbate, Masbate. Accused-appellant wanted to surrender for having killed someone in Barangay Luy-a, Aroroy, Masbate

on October 26, 1986. The two took a Honda motorcycle. In Masbate, Masbate, he was asked by accused-appellant to drop him off at Demate Studio. Amaro said he did not know the name of the victim nor was he informed by accused-appellant of the victim's identity. Amaro did not know if accused-appellant carried the gun used for killing the victim.[8]

When presented by the defense, however, accused Amaro, through counsel, informed the court on March 5, 1990 that he was dispensing with his testimony and submitting his case without presenting any evidence.

On the other hand, accused-appellant Samson Suplito was scheduled to present his evidence on October 19, 1989 but he failed to appear in court. He likewise failed to appear and present his evidence despite the fact that the hearing of the case was postponed nine times. On June 25, 1990, accused-appellant, through counsel, manifested that he was submitting his case without presenting any evidence but requested that he be allowed to file a memorandum.[9]

On January 14, 1991, the trial court rendered its decision convicting accused-appellant of murder, while dismissing the case against the other accused, Ely Amaro y Balbuena. The dispositive portion of its decision reads as follows:

WHEREFORE, this Court finds the accused Samson Suplito guilty beyond reasonable doubt of the crime of murder, qualified by treachery, without any mitigating circumstance and is hereby sentenced to RECLUSION PERPETUA. To indemnify the heirs of the deceased the amount of Thirty (P30,000.00) Thousand Pesos and to pay the cost.

The case against Ely Amaro y Balbuena is hereby ordered DISMISSED for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.[10]

Hence, this appeal.

Accused-appellant contends that ³/₄

I.

THE TRIAL COURT ERRED IN PROCEEDING WITH THE DIRECT EXAMINATION OF AN ALLEGED EYEWITNESS IN THE ABSENCE OF THE DEFENSE COUNSEL WHO WAS JUST UPSTAIRS ATTENDING TO ANOTHER CASE IN ANOTHER SALA.

II.

THE TRIAL COURT ERRED IN DENYING THE ACCUSED HIS RIGHT TO TESTIFY AS WITNESS IN HIS OWN BEHALF, AND TO HAVE COMPULSORY PROCESS ISSUED TO SECURE THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF EVIDENCE IN HIS BEHALF.

III.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

First. Accused-appellant makes much of the fact that his counsel was not able to cross-examine prosecution witness Salve C. Chavez at the hearing on September 12, 1989 as his counsel was then attending the hearing of another case in another court. He claims that, as a result, he was deprived of the opportunity to interpose, through counsel, timely objections to the questions propounded to the witness during her direct examination and to

cross-examine her immediately thereafter. Although the cross-examination of witness Chavez was held in the afternoon of the same day, he argues that the defense counsel was not as effective as he would have been had he been present during the direct examination.

Rule 132, §6, of the Revised Rules on Evidence provides:

Sec. 6. Cross Examination, its purpose and extent. $\frac{3}{4}$ Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias or the reverse, and to elicit all important facts bearing upon the issue.

The cross-examination of a witness is a right of a party against whom he is called. Art. III, §14(2) of the 1987 Constitution provides that the accused shall have the right to meet the witnesses face to face. Rule 115, §1(f), of the Revised Rules of Criminal Procedure states that, in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witnesses against him.

In the case at bar, the records show that on September 6, 1989, accused-appellant's counsel filed a motion^[11] for the postponement of hearing set on September 12, 1989 to September 21, 1989 on the ground that he had another hearing before Branch 48 of the RTC of Masbate, Masbate on that day. In an order, dated September 7, 1989,^[12] the trial court denied the motion for postponement in view of the importance of the testimony of prosecution witness Chavez. Hence, on September 12, 1989, accused-appellant's counsel appeared in court.^[13] Counsel might thereafter have left the courtroom, but the records of the court do not show that he was granted permission to leave the court. After the private prosecutor terminated the direct examination on witness Chavez, counsel for accused Amaro commenced his cross-examination. In the course of the cross-examination, the trial court made it of record that accused-appellant's counsel had arrived.^[14] The minutes^[15] of the proceedings of September 12, 1989 show that counsel for accused-appellant arrived in the middle of the cross-examination and manifested that he would conduct his cross-examination in the afternoon of that same day. For this purpose, he asked for a copy of the transcript of stenographic notes so that he could conduct his cross-examination.

Indeed, accused-appellant's counsel conducted an extensive cross-examination^[16] and re-cross-examination^[17] of witness Salve C. Chavez in the afternoon of September 12, 1989. Accused-appellant cannot, therefore, claim a denial of his right of cross-examination. What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine the witness.^[18] The proscription, therefore, cannot apply to the instant case where in spite of the absence of counsel during the direct examination, he was thereafter accorded the opportunity to examine the witness.

Second. Accused-appellant claims that, because of procedural lapse, he was not able to testify in his own behalf and to avail of the compulsory process to secure the attendance of his witnesses as guaranteed to him by the Constitution.

The claim has no merit. The order, dated September 12, 1989,^[19] of the trial court states that after the prosecution had rested its case and its exhibits had been duly marked and offered in evidence, the case was set for the reception of defense evidence on October 19 and 20, 1989. However, on October 19, 1989, accused-appellant did not appear in court. The hearing was set and reset at the instance of the defense no less than nine times.^[20] Finally, on June 25, 1990,^[21] counsel for accused-appellant manifested in open court that accused-appellant was submitting his case for decision without presenting his evidence. Accused-appellant thus waived his right to present evidence.

Even in this appeal, accused-appellant has shown lack of interest in pursuing his case. After being granted a total extension of 120 days to file his appellant's brief, accused-appellant's counsel filed a motion to submit the case

for decision without a brief. The motion was denied and counsel was directed to file the required brief.[22] Instead of complying, counsel filed a motion to withdraw, with the conformity of accused-appellant, in view of the fact that accused-appellant wanted to submit the case for decision without filing appellant's brief. Considering that the filing of the brief for accused-appellant is mandatory under §3, Rule 124 of the Revised Rules of Criminal Procedure, the Court again denied the motion.[23] Accused-appellant then asked for another extension of 60 days within which to file the brief for accused-appellant. The Court, leaning over backwards in favor of accused-appellant, granted the motion. It was only then that an appellant's brief was filed on his behalf.

Third. The prosecution evidence fully establishes the guilt of accused-appellant. The eyewitness, Salve C. Chavez, recognized accused-appellant because he and her brother had been friends for 11 years. The rule is settled that where there is nothing to indicate that a witness was actuated by improper motives, his positive and categorical declarations on the witness stand, made under solemn oath, should be given full faith and credence.[24] It has not been shown that Chavez had reason to falsely implicate accused-appellant. On the contrary, if at all, she would be favorably disposed towards accused-appellant considering that he and this witness' brother were very good friends. Furthermore, the narration of Chavez that accused-appellant used a .45 caliber gun in shooting the victim on October 26, 1986 is confirmed by the post mortem report prepared by Dr. Quemi on October 27, 1986.

The trial court correctly appreciated treachery as having qualified the killing of the victim to murder. The evidence for the prosecution established that while the victim was at the rear portion of the truck unloading its cargoes, accused-appellant suddenly sprang from the left side of the road and, after tapping the victim on the left shoulder, shot him in the head as he turned to the left apparently to see who was tapping his shoulder. The victim was unarmed and was totally defenseless. The elements of treachery were present, to wit: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and, (2) the means of execution were deliberately and consciously adopted.[25] Treachery is evident from the suddenness of the shooting which took place without the slightest provocation on the part of the victim who was unarmed and had no opportunity to defend himself.[26]

Fourth. The trial court awarded the heirs of the victim Felino B. Castillo civil indemnity of P30,000.00. The award of damages should be modified. In line with prevailing jurisprudence, the civil indemnity should be increased to P50,000.00 which is awarded without need of further proof other than the death of the victim.[27] In addition, the heirs of the victim are also entitled to moral damages in the amount of P50,000.00 in accordance with our recent rulings.[28]

As regards the amount of actual damages, Isabelo Castillo, the father of the victim, testified that he spent P3,800.00 for the coffin, P275.00 for the burial, and P15,000.00 for the wake. The total amount of P19,075.00 as actual damages should be awarded to the heirs of Felino B. Castillo according to him.

However, aside from these bare assertions of the father of the victim, no other evidence of actual damages was presented as required by Art. 2199 of the Civil Code. Nonetheless, in lieu of actual damages, temperate damages under Art. 2224 may be recovered as it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty. For this reason, an award of P15,000.00 by way of temperate damages should suffice.

WHEREFORE, the decision of the Regional Trial Court of Masbate, Masbate, Branch 45, is **AFFIRMED** with the **MODIFICATION** that the award of civil indemnity to the heirs of the victim Felino B. Castillo is increased to P50,000.00 and, in addition, the accused-appellant is ordered to pay P50,000.00 as moral damages, P15,000.00 as temperate damages, and the costs.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Buena, JJ., concur.

[1] Per Judge Gil P. Fernandez.

[2] RTC Records, p. 1.

[3] TSN, pp. 1-9, 14-15, Sept. 12, 1989; See Sworn Statement of Salve C. Chavez dated November 1, 1986; RTC Records, p. 3.

[4] TSN, pp. 1-6, June 22, 1989; Affidavit of Edwin Raquim dated November 10, 1986 (Exh. D); RTC Records, p. 5.

[5] TSN, pp. 1-13, Dec. 8, 1988; TSN, pp. 29-30, Sept. 12, 1989.

[6] TSN, pp. 6-8, 11, June 22, 1989.

[7] TSN, pp. 1-7, Sept. 12, 1989.

[8] Sinumpaang Pahayag, dated October 27, 1986, of Ely Amaro y Balbuena (Exh. E); RTC Records, pp. 6-7.

[9] See Order dated June 25, 1990; RTC Records, p. 258.

[10] Rollo, p. 16.

[11] RTC Records, p. 146.

[12] Id., p. 147.

[13] TSN, p. 1, Sept. 12, 1989.

[14] Id., p. 16.

[15] RTC Records, p. 158; See Rollo, pp. 10-11.

[16] TSN, pp. 17-26, Sept. 12, 1989.

[17] Id., pp. 27-29.

[18] *People v. Barasina*, 229 SCRA 450 (1994).

[19] 19 RTC Records, p. 152; See Rollo, pp. 10-11.

[20] See footnote 10.

[21] See Order dated June 25, 1990; RTC Records, p. 258.

[22] Resolution dated Dec. 7, 1992; Rollo, p. 35.

[23] Order dated March 10, 1993; Id., p. 46.

[24] *People v. Ebrada*, G.R. No. 122774, September 25, 1998.

[25] *People v. Atrejenio*, G.R. No. 120160, July 13, 1999; *People v. Verde*, G.R. No. 119077, February 10, 1999.

[26] *People v. Atrejenio*, supra.; *People v. Taclan*, G.R. No. 123109, June 17, 1999.

[27] *People v. Bautista*, G.R. No. 96092, August 17, 1999; *People v. Panida*, G.R. Nos. 127125 & 138952, July 6,

1999.

[28] *People v. Atrejenio*, supra.; *People v. Panida*, supra.

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