

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO SAN GABRIEL Y ORTIZ, DEFENDANT-APPELLANT.

G.R. No. 107735. February 01, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RICARDO O. SAN GABRIEL was charged with murder in an Information alleging that on 26 November 1989, armed with a bladed weapon, in conspiracy with "Ramon Doe," with treachery, evident premeditation and intent to kill, he assaulted and stabbed to death Jaime A. Tonog.[1]

The trial court convicted the accused as charged and sentenced him "to life imprisonment and to pay the heirs of Jaime Tonog the sum of P30,000, plus costs." [2]

The accused is now before us on appeal.

The evidence shows that at around seven o'clock in the evening of 26 November 1989, within the vicinity of Pier 14 at North Harbor along Marcos Road, Manila, a fistfight ensued between Jaime Tonog on one hand and the accused Ricardo San Gabriel together with "Ramon Doe" on the other. The fight was eventually broken up when onlookers pacified the protagonists. Ricardo and Ramon then hastened towards Marcos Road but in no time were back with bladed weapons. They approached Tonog surreptitiously, surrounded him and simultaneously stabbed him in the stomach and at the back, after which the assailants ran towards the highway leaving Tonog behind on the ground. He was then brought to Mary Johnston Hospital where he was pronounced dead on arrival.

Dr. Marcial G. Cenido, Medico-Legal Officer of the Western Police District, autopsied the cadaver of the victim and reported that it sustained two (2) penetrating stab wounds each caused by a single-bladed instrument. He opined that both wounds were fatal.[3]

The accused has a different version. He testified that he saw Tonog drunk; Tonog even attempted to box him but he parried his blow; Tonog continued walking but when he chanced upon Ramon he suddenly and without provocation boxed and kicked Ramon; Ramon fought back but was subdued by his bigger assailant so the former ran towards the highway; when Tonog met a certain "Mando" he boxed the latter who however fought back despite his (accused) warning not to; at this moment he saw Ramon return with a bolo on hand; he warned Ramon not to fight but his advice went unheeded; instead, with bolo on hand Ramon struck Tonog on the belly; when "Mando" saw what happened he ("Mando") pulled out his knife and also stabbed Tonog at the back; Ramon and "Mando" then fled towards the highway.

The accused further claimed that he even stayed with the victim and called out the latter's companions to bring him to the hospital; that prosecution witness Brenda Gonzales only arrived at the crime scene after Tonog was already taken to the hospital; that Brenda even inquired from him what happened and then prodded him to testify; that his refusal coupled with the fact that he owed Gonzales some money earned him the ire of the latter and that was why he was charged for the death of Tonog.

Accused-appellant claims in this appeal that the trial court erred: (a) in giving credence to the testimonies of prosecution witnesses Brenda Gonzales and Pio Ochobillo, and for discrediting his; (b) in finding that the killing was attended with evident premeditation; (c) in ruling that he committed treachery and, (d) in convicting him of murder.[4]

We sustain the conviction of the accused for murder. It is settled that findings of fact of the trial court are accorded greatest respect by the appellate court absent any abuse of discretion,[5] and none is perceivable in the case at bench; hence we affirm the factual findings of the trial court.

The accused contends that the testimonies of the prosecution witnesses are incredible and conflicting. We however find otherwise. Gonzales and Ochobillo, as observed by the trial court, testified in a direct and candid manner. No evil motive is attributed to them as to testify falsely against the accused. That Gonzales harbored a grudge against the accused because he owed her some money, and even enticed her customers into patronizing another carinderia, can hardly be believed. We are not convinced that Brenda Gonzales would testify against accused-appellant for a crime so grave simply because he owed her a measly sum of P300.00. That he enticed the customers of Gonzales into patronizing another carinderia is belied by the fact that on the night of the incident he was, as he claimed, eating at the carinderia of Gonzales. If there be any testimony that should be considered incredible and illogical it must be that of the accused. His assertion that "Mando" stabbed the victim should not receive any evidentiary value when weighed against the positive assertion of the prosecution witnesses that the accused was the assailant of Jaime Tonog.

Quite interestingly, the accused did not offer any information regarding the person and circumstances of "Mando." Up to this date "Mando" remains a myth. Not a single witness was presented by the defense to prove who "Mando" was, nor even a hint of his personal circumstances. During the entire proceedings in the court below "Mando" was never mentioned by the prosecution witnesses. Nobody ever implicated him except the accused. In fact, there should have been no difficulty procuring witnesses to testify on the part of the accused as the incident was viewed openly by a multitude of bystanders. His failure to present any witness pointing to "Mando" as the perpetrator of the crime convinces us that "Mando" in fact existed only as a figment of the mind.

The accused also asserts that Gonzales arrived at the crime scene only after the victim was brought to the hospital and that she even inquired from him about what happened.

Again we are not persuaded. The statement contradicts the earlier version of the accused that Gonzales was prejudiced against him as he owed her some money. For, granting that Gonzales had a grudge against him it was not likely that she would inquire from him about the incident as there were other persons then present who could shed light on the startling occurrence.

Equally dubious is the avowal of the accused that Gonzales arrived at the crime scene only after the victim was rushed to the hospital considering that the incident took place just in front of her store. Besides, this claim was easily demolished by Gonzales' detailed account of the fight.

The fact that the witnesses did not immediately report the incident to the police does not necessarily discredit them. After all, reports were made albeit by different persons. The accused banks on the apparent inconsistency as to why Gonzales failed to give immediately her account of the killing to the authorities. But the discrepancy is so minor that it cannot undermine her credibility nor detract from the truth that she personally witnessed the incident and positively identified the accused.

The accused leans heavily on the Advance Information Sheet[6] prepared by Pat. Steve Casimiro which did not mention him at all and named only "Ramon Doe" as the principal suspect. Unfortunately this cannot defeat the

positive and candid testimonies of the prosecution witnesses. Entries in official records, as in the case of a police blotter, are only prima facie evidence of the facts therein stated. They are not conclusive. The entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.[7] Significantly, the Advance Information Sheet was never formally offered by the defense during the proceedings in the court below. Hence any reliance by the accused on the document must fail since the court cannot consider any evidence which has not been formally offered.[8]

Parenthetically, the Advance Information Sheet was prepared by the police officer only after interviewing Camba, an alleged eyewitness. The accused then could have compelled the attendance of Camba as a witness. The failure to exert the slightest effort to present Camba on the part of the accused should militate against his cause.

Entries in official records made in the performance of his duty by a public officer or by a person in the performance of a duty specially enjoined by law are prima facie evidence of the facts therein stated.[9] But to be admissible in evidence three (3) requisites must concur: (a) The entry was made by a police officer or by another person specially enjoined by law to do so; (b) It was made by the public officer in the performance of his duties or by such other person in the performance of a duty specially enjoined by law; and, (c) The public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[10]

The Advance Information Sheet does not constitute an exception to the hearsay rule, hence, inadmissible. The public officer who prepared the document had no sufficient and personal knowledge of the stabbing incident. Any information possessed by him was acquired from Camba which therefore could not be categorized as official information because in order to be classified as such the persons who made the statements not only must have personal knowledge of the facts stated but must have the duty to give such statements for the record.[11] In the case of Camba, he was not legally so obliged to give such statements.

The accused enumerates discrepancies in the testimonies of the prosecution witnesses. Thus, according to him, it was testified that the victim was stabbed by the accused at the back but failed to point out its precise location. The stabbing admittedly occurred at around seven o'clock in the evening but the Advance Information Sheet reported "6:30 p.m." One witness testified that the fistfight was only between the victim and "Ramon Doe," while another reported that it involved the victim, "Ramon Doe" and the accused. Further, it was not accurately determined whether Ramon and the accused returned to the scene of the crime within five (5) minutes or after the lapse thereof.

As previously stated, the discrepancies do not militate against the fact firmly established by the prosecution that Tonog was stabbed at the back by the accused and by "Ramon Doe" in the abdomen. Any discordance noted is so minor and insignificant that no further consideration is essential. The most honest witnesses make mistakes sometimes, but such innocent lapses do not necessarily impair their credibility. The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[12]

The presence of the accused in the vicinity even after the commission of the crime does not in any way extricate him from his dilemma. Certainly, it is no proof of his innocence.

The court a quo properly considered the aggravating circumstance of treachery in convicting the accused of murder. Treachery is present when the offender commits any of the crimes against person, employing means,

methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[13] Alevosia or treachery presumes an attack that is deliberate and unexpected. There is no treachery when the victim is placed on guard, as when a heated argument preceded the attack, especially when the victim was standing face to face with his assailants, and the initial assault could not have been unforeseen.[14]

It is true that in the case at bench the attack was preceded by a fistfight. It was however established that they were already pacified by onlookers when the accused and Ramon returned. Lulled into complacency the victim simply stayed where he was before the fistfight when after a brief moment the accused together with Ramon returned with bladed weapons. Both approached the victim and circled him surreptitiously. The attack was sudden and simultaneous that the victim was never given a chance to defend himself. As we have held in *People v. Balisteros*,^[15] where a victim was totally unprepared for the unexpected attack from behind and had no weapon to resist it, the stabbing could not but be considered as treacherous. The evidence proved that the victim was caught unaware by the sudden assault. No weapon was found, nor even intimated to be, in his possession.

Conversely the court a quo should have disregarded evident premeditation. Evident premeditation requires a showing that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.^[16] Evidence for the prosecution showed that after the fight was broken up the accused and "Ramon Doe" proceeded towards the highway. They returned only after a lapse of approximately five (5) minutes. From the foregoing we cannot conclude that the accused had sufficient time within which to meditate on the consequences of his acts. Meditation necessitates that it be evident and proven. Be that as it may, treachery as a qualifying circumstance having attended the killing, the conviction of the accused for murder still holds.

WHEREFORE,. the decision of the court a quo in Crim. Case No. 90-81744 dated 25 July 1991 convicting accused-appellant RICARDO SAN GABRIEL Y ORTIZ of murder is AFFIRMED. The penalty of life imprisonment however is MODIFIED to reclusion perpetua,^[17] while the award of P30,000.00 as indemnity is INCREASED to P50,000.00 conformably with existing jurisprudence. Costs against accused-appellant.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 3.

[2] Decision penned by Judge Felix B. Mintu, RTC-Manila, Br. V, Rollo, p. 16.

[3] Exh. "E".

[4] Appellant's Brief, p. 2; Rollo, p. 73.

[5] *People v. Santito*, G.R. No. 91628, 22 August 1991, 201 SCRA 94; *People v. Dabon*, G.R. No. 102004, 16 December 1992, 216 SCRA 663.

[6] Exh "B".

[7] See Note 5.

[8] Sec. 34, Rule 132, Revised Rules of Court.

[9] Sec. 44, Rule 130, Id.

[10] *Africa v. Caltex (Phil.), Inc.*, No. L-12986, 31 March 1966, 16 SCRA 452, citing *Moran*, Comments on the

Rules of Court, Vol. 3, 1957 Ed. p.398.

[11] See Note 9.

[12] People v. Dabon, see Note 5, p. 664, citing People v. Natan, G.R. No. 86640, 25 January 1991, 193 SCRA 355; People v. Laredo, G.R. Nos. 81249-51, 14 May 1990, 185 SCRA 383; People v. Loveria, G.R. No. 79138, 2 July 1990, 187 SCRA 47; and People v. Dumpe, G.R. Nos. 80110-11, 22 March 1990, 183 SCRA 547.

[13] Art. 14, par. 16, The Revised Penal Code.

[14] People v. Lopez, et al., G.R. No. 112448, 30 October 1995 citing People v. Gasper, et al., G.R. No. 103303, 5 August 1993, 225 SCRA 189.

[15] G.R. No. 110289, 7 October 1994, 237 SCRA 516, citing People v. Bragaes, G.R. No. 62359, 14 November 1991, 203 SCRA 555.

[16] People v. Lopez, see Note 14, p. 19, citing People v. Danque, G.R. No. 107978, 19 November 1993, 228 SCRA 83, 91; People v. Rivera, G.R. No. 101798, 10 May 1993, 221 SCRA 647, 656.

[17] Art. 248, The Revised Penal Code. In People v. De la Cruz, G.R. Nos. 91865-66 and G.R. Nos. 92439-40, 6 July 1993, 224 SCRA 552, citing companion cases, we decreed that reclusion perpetua was not synonymous or interchangeable with life imprisonment because they do not have the same duration and the latter does not carry with it the accessory penalties provided in the Revised Penal Code.

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