

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JASON NAREDO @ JERRY AND ESTELITO ESEO @ ADO, ACCUSED, JASON NAREDO @ JERRY, ACCUSED-APPELLANT.

G.R. No. 107802. July 31, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 31, of San Pablo City, finding accused-appellant Jason Naredo guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Bayani Sumadsad in the sum of P50,000.00, and to pay the costs.

Bayani Sumadsad was killed in the early hours of October 20, 1991 while attending a wedding party in the house of a certain Rolando Flores in Barangay Santiago, San Pablo City. He suffered ten stab and hack wounds, three of which, located on the left chest near the armpit, on the right side of the chest and on the right side of the stomach, were fatal.[1]

Accused-appellant Jason Naredo and Estelito Eseo were charged with the killing of Sumadsad, but only accused-appellant was apprehended. Eseo could not be found and so his case was ordered archived until he was arrested.

Accused-appellant pleaded not guilty, whereupon trial proceeded against him.

The prosecution established the following facts:

On October 19, 1991, at around nine in the evening, Bayani Sumadsad and his cousin, Delfin Talavera, went to the house of Rolando Flores in Barangay Santiago, San Pablo City to attend a party for certain Panchico and Susie whose wedding was going to be held the next day. Among the many guests at the party were accused-appellant Jason Naredo and Estelito Eseo. There was dancing and drinking until past midnight.[2]

Sumadsad got drunk and went to a fallen coconut tree. There he sat on the ground and rested his head on his forearm, using the tree for support. He was accompanied by Talavera who, after a while, went to buy cigarettes in a nearby store. Talavera stayed at the store for about half an hour, from where he watched the dance go on. Now and then, he looked in the direction of his cousin Sumadsad. After a while, Talavera saw accused-appellant and Eseo arrive and without a word stabbed Sumadsad. Accused-appellant Naredo had a 4-edged knife, while the latter had a bladed instrument used for shaving carabaos. Accused-appellant was first to stab Sumadsad on the body. He was followed by Eseo and then the two took turns striking Sumadsad with their knives. Talavera said he had seen Sumadsad and Eseo talking before the incident, but they did not have any altercation.

Talavera was so shocked by what he witnessed that he was not even able to call for help.[3] For that matter, the dance stopped but no one in the party had enough courage to come near the victim.[4] It was only after some time that Talavera approached his cousin. He held Sumadsad's wrist and found him dead. With the help of Ramil Averion and the latter's father, Renato, he removed the body of Sumadsad and reported the matter to the

barangay authorities and the police.[5]

Dr. Nida Glorioso, medical officer, autopsied the victim's body and made a Necropsy Report (Exh. B) which indicated ten stab and hack wounds.

Accused-appellant admitted being at the party but denied involvement in the killing of Sumadsad. He claimed that at six in the evening of October 19, 1991, he went to the party for his cousin Susie who was getting married the next day. He joined Normito Dionglay, Delfin Talavera, Bayani Sumadsad, Estelito Eseo and Rogelio Talavera in drinking beer. At around nine in the evening, he went to the dance place where, in accordance with local custom, he pinned money on the prospective bride and groom as they danced. He saw Estelito Eseo and Bayani Sumadsad arguing and then engaged in a fist fight near the dance place. He broke up their fight, after which he took Sumadsad to the house of Susie. Accused-appellant said he returned to the dance place and danced.[6]

He was later asked by Delfin Talavera, Tereso Sumadsad and Ramilito Averion to join them to his uncle's house about half a kilometer away but he begged off and instead went back to Susie's house to see Sumadsad, but when he went there, he found Sumadsad gone. He did not see Eseo either. He returned to the dance place and stayed there until midnight. He then went under a coconut tree, about eight meters away, to sleep. After half an hour, Eseo arrived, holding two blood-stained knives, one in each hand. Eseo's shirt was also blood-stained. Eseo asked him to go with him to Barangay Bae. Initially he refused to go but he eventually relented because Eseo threatened to kill him if he did not go. Accused-appellant claimed that on their way to Bae, he was told by Eseo that he had killed Sumadsad. He said that they proceeded to the house of Eseo's uncle in Barangay Bae but reaching that place he managed to escape and went to the Chinese cemetery in San Pablo City where he sought its caretaker, Ludovico "Lody" Cabrera. Accused-appellant worked for Lody. Accused-appellant claimed that on advice of "Lody" he did not report the matter to the authorities, lest he was implicated in the killing and his status as a probationer in another criminal case be adversely affected.[7]

The defense also presented Ludovico "Lody" Cabrera who testified that he was the caretaker of the Chinese cemetery and that accused-appellant worked for him. Accused-appellant slept at night in his house, but in the evening of October 20, 1991, accused-appellant asked permission to see his mother in Barangay Santiago. According to Lody, accused-appellant came back the following day, at six in the morning. Accused-appellant told him he had a companion who had killed somebody and that his companion threatened to kill him and his brothers and sisters if he did not join him (the unidentified companion) escape. Lody told the court that accused-appellant's companion stayed at the gate of the cemetery and did not get inside his house. Lody said he urged accused-appellant to report the matter to the police (Lody had a cousin who was a policeman) but accused-appellant was hesitant for fear of his life and that of his brothers and sisters.[8]

On the basis of the parties' evidence, the trial court found accused-appellant guilty of murder. It held:[9]

The actuations and movements of accused Eseo and Naredo evidently showed conspiracy in the commission of the crime with evident intent to kill the victim. Treachery was present in the commission of the crime as it was established that the victim was sitting on a squatting position with his head resting on a fallen coconut tree and was drunk at that time when he was stabbed by both accused which made the victim defenseless and was not in a position to prevent or repel the attack against him.

The accused attempted to put up a defense of alibi through the testimony of Ludovico Cabrera by stating that it was on October 20, 1991 in the afternoon that accused Naredo asked permission from him to go to his parents' home to deliver money and on the following day at 6:00 o'clock in the morning, October 21, 1991, accused Naredo arrived. This statement of Ludovico Cabrera was not substantiated by any other witness and it is even contrary to the statement of accused Naredo himself who clearly testified that it was on October 19, 1991 that he asked permission from Ludovico Cabrera to go to his parents' home and it was in the early morning of

October 20, 1991 when he returned to Cabrera's place. The defense of alibi is unavailing as against the positive identification by the prosecution witness Delfin Talavera and the absence of physical impossibility of accused Naredo and his co-accused Estelito Eseo to be at the scene of the crime.

As already noted, therefore, the trial court sentenced accused-appellant to suffer the penalty of reclusion perpetua, to indemnify the heirs of Bayani Sumadsad in the amount of P50,000.00, and to pay the costs. Hence, this appeal.

Accused-appellant contends that:[10]

I. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE, UNWORTHY AND INCONSISTENT TESTIMONY OF PROSECUTION WITNESS DELFIN TALAVERA WITH RESPECT TO THE ASSAILED STABBING INCIDENT AND IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

II. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT JASON NAREDO OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

We find no reason for reversing the trial court's findings they being supported by the evidence, not to mention the fact that such findings are entitled to great respect, the trial court having had the opportunity to observe the demeanor of the witnesses and, therefore, was in a better position to appraise their credibility. Indeed accused-appellant was positively identified by Delfin Talavera. This witness saw everything that happened to Bayani Sumadsad. He was just five "arms stretches" or about seven meters away from the scene of the crime.[11] He had no motive to testify falsely against accused-appellant and impute to the latter the commission of a serious crime if what he declared under oath was not the truth.[12] The fact that he and the victim were cousins is not sufficient to place in doubt his credibility and reliability in the absence of any other circumstance which would make him lie. On the other hand, the fact that the victim was his relative could only have given him a firm resolve to identify the assailants so that justice would be done to the victim through the conviction of those who were really guilty.[13]

Accused-appellant questions the credibility of Talavera, pointing out the latter's failure to come to the aid of his cousin as the latter was being attacked. If Talavera saw the killing, accused-appellant wonders why this witness did not ask for help when there were supposed to be four persons in the store or from the guests in the dance hall.

In *People v. Abonada*,[14] this Court noted how different people react differently to an unusual event, as it ruled that there is no standard form of behavior when an individual witnesses something so shocking or gruesome as murder especially, if the assailant is near. Talavera was barely 16 years old then at the time of the incident. (He was 17 when he testified on March 2, 1992). The sight of the killing must have unnerved him. Nor is reluctance to get involved in the criminal incident an unnatural reaction of some individuals.[15] In this case, the records show it took sometime after the victim had been attacked when those at the dance dared to go near the victim or to call the police.[16] Everyone was overcome by fear. Talavera said he was afraid the killers would turn to him if he made an outcry.[17]

Accused-appellant also claims that because, as Talavera admitted, he was a "bit drunk" Talavera could not have seen Sumadsad being attacked and that because an "arattles" fence obstructed his view of the place where the crime took place, he could not have recognized his cousin's assailants.[18]

It is true Talavera admitted he was a "bit drunk" when he arrived at the wedding party. But that was around nine in the evening of October 19, 1991 and he said he did not have anymore drink at the party.[19] At the time the victim was killed at around two in the morning of October 20, 1991, whatever effect the alcohol he had consumed had on his perception might have worn off. At least five hours had already elapsed, which was long enough to

allow the effect of slight inebriation to wear off.

Anent the alleged obstruction of view by the “arattles” fence, Talavera said it did not completely block his view so as to prevent him from recognizing accused-appellant and Eseo as the assailants.[20] Talavera had known accused-appellant four (4) months before the commission of the crime.[21] He and the assailants were all from San Pablo City, although they were residents of different barangays. It is not inconceivable that despite the partial obstruction, he was able to recognize accused-appellant. Nor is it improbable that, attracted to the commotion caused by the incident, he tried to see what was going on, especially since he knew it was his relative who was being attacked. Indeed, Talavera’s testimony on the commission of the crime was positive, straightforward and consistent and withstood the rigid questioning employed by the defense and the trial court.

Lastly, accused-appellant harps on the alleged inconsistency between Talavera’s testimony that Bayani Sumadsad had been stabbed thirteen (13) times and his sworn statement to the police on October 28, 1991 in which he said he could not tell how many times the victim had been stabbed by accused-appellant and by Estelito Eseo.

Talavera’s testimony, when confronted by the defense with his sworn statement, was as follows:

ATTY. GOICO

Q Do you remember, Mr. Witness, having been asked by the policeman, may I read question No. 19.” “Ilang beses sinaksak nitong si Estelito itong si Bayani Sumadsad? And your answer was “Hindi ko rin po mabilang, maraming beses din po.

In question No. 18, you were asked “Ilang beses sinaksak ni Jason itong si Bayani Sumadsad? Your answer was “Marami pong beses, hindi ko po mabilang.” Do you remember having given that question and answer?

A: Those were the answers I gave, sir.

Q: Why did you not tell the policeman that you saw, more or less, 13 times that the two accused stabbed the victim?

A: I was not able to tell the policeman, because I just saw that he sustained many wounds.[22]

It may be that the witness did not really know at the time he gave his statement to the police exactly “how many times the victim was stabbed by Estelito” and “how many times the victim was stabbed by Jason.” The statement was given on October 28, 1991. It is possible that he only heard much later that the victim had suffered multiple wounds so that when asked “how many thrusts these two accused made at the time,” he said “thirteen (13) thrusts,” all of which “landed on the body of Bayani Sumadsad.”[23] Otherwise, he did not really count the number of times he saw the assailants hit or stab the victim. The fact is that the necropsy report (Exh. B) of Dr. Nida E. Glorioso states that Sumadsad sustained ten wounds, eight of which were stab wounds, while two were caused by hacking.

But these are minor discrepancies not affecting the integrity of Talavera’s testimony. What is important is that from the beginning, starting with his statement given to the police on October 28, 1991, just eight days after the incident, until his testimony in court on March 2, 1992, he was firm in his identification of accused-appellant Jason Naredo as one of two persons who killed Bayani Sumadsad on October 20, 1991. He was cross examined, but aside from the minor contradictions shown, the defense was not able to impeach his credibility. His answer as to the number of blows the assailants delivered may have stemmed from an honest desire to tell what he thought he knew. After all, he was not asked the basis of his answer. On the whole, his testimony is consistent and forthright.

Indeed, accused-appellant was admittedly in the vicinity of the place where Bayani Sumadsad was killed. His only defense is that he fell asleep under a coconut tree and was only later awakened by his coaccused when the latter forced him to go with him as he escaped to Barangay Bae. Why Estelito Eseo should force accused appellant to

join him, even threatening accused-appellant if he refused to come, is revealing of accused-appellant's complicity in the killing. In fact, contrary to accused-appellant's claim that he escaped from Eseo after reaching Barangay Bae, his own witness, Ludovico "Lody" Cabrera, said that when accused-appellant arrived at the cemetery in San Pablo City, Eseo was with him (accused-appellant). It is clear that the two were both escaping from the authorities. This circumstance, coupled with the testimony of Delfin Talavera that he saw them take turns stabbing Bayani Sumadsad, amply justify the trial court's finding that the two had conspired to kill Sumadsad. They acted in concert.

Nor is there merit in the defense of alibi. Ludovico "Lody" Cabrera testified that in the afternoon of October 20, 1991, accused-appellant asked permission to go to his parent's house to give money to his mother and returned only the following day at six o'clock in the morning after escaping from Eseo. He was implying that accused-appellant was elsewhere when the crime was committed. Not only is this contrary to accused-appellant's admission that he was at the place where the crime was committed, this is also contrary to accused-appellant's claim that he went to his mother's house in the evening of October 19, not October 20. The theory of alibi does not deserve serious consideration.

For the foregoing reasons, we hold accused-appellant guilty of murder. The sudden attack on the victim while the latter was asleep and drunk and unable to defend himself constitutes treachery. The assailants were afforded an opportunity to commit the crime without risk to themselves. In *People v. Evangelista*,^[24] it was held that there is treachery where the victim was killed while he was asleep.

WHEREFORE, the decision of the trial court is AFFIRMED.
SO ORDERED.

Regalado, (Chairman), Romero, and Puno, JJ., concur.
Torres, Jr., J., on leave.

[1] TSN, p. 5-7, March 18, 1992.

[2] TSN, pp. 4-6, March 2, 1992.

[3] *Id.*, pp. 16 & 22.

[4] *Id.*, p. 23.

[5] *Id.*, p. 11.

[6] TSN, pp. 3-8, June 3, 1992; TSN, p. 7, July 8, 1992.

[7] TSN, pp. 8-12, June 3, 1992; TSN, pp. 8-19, July 8, 1992.

[8] TSN, pp. 3-6, July 13, 1992; TSN, pp. 2-8, July 27, 1992.

[9] Rollo, pp. 19-20.

[10] Brief for the Accused-Appellant, p. 5; Rollo, p. 37.

[11] TSN, p. 8, March 2, 1992.

[12] *People v. Carraig*, 202 SCRA 357 (1991).

[13] See *People v. Escoto*, 244 SCRA 87 (1995).

[14] 169 SCRA 530 (1989).

[15] *People v. Coronado*, 145 SCRA 250 (1986).

[16] TSN, p. 23, March 2, 1992.

[17] *Id.*, p. 16.

[18] Brief for the Accused-Appellant, 5-6; Rollo, 37-38.

[19] TSN, p. 14, March 2, 1992.

[20] *Id.*, pp. 21-22.

[21] *Id.*, p. 3.

[22] *Id.*, p. 18.

[23] TSN, pp. 10-11, March 2, 1992.

[24] 256 SCRA 611 (1996).

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