

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.NOEL BANIEL AND JOY BANIEL, ACCUSED-APPELLANT.

G.R. No. 108492. July 15, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a case of murder on Christmas day.

Pleading guilty to a criminal information which states

“That on or about December 25, 1990, in the municipality of Aparri, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Noel Baniel and Jolly Baniel, conspiring together and helping each other, armed with pointed instruments, with intent to kill, with treachery and evident premeditation, did then there willfully, unlawfully and feloniously attack, assault and stab one Nicasio Caluag, inflicting upon him stab wounds on his body which caused his death.”[1]

accused-appellants Noel and Jolly Baniel were tried and convicted of murder by the Regional Trial Court (RTC) of Aparri, Cagayan, for the death of Nicasio Caluag (victim) imposing on them the penalty of reclusion perpetua. The dispositive portion of the decision reads:

“WHEREFORE, based on the evidence adduced, this Court finds both of the accused NOEL BANIEL and JOLLYMER BANIEL alias Jolly Baniel, both of Linao, Aparri, Cagayan, GUILTY beyond reasonable doubt of the offense of Murder as charge in the Information and the Court hereby:

(a) Sentences each of said accused JOLLYMER BANIEL alias Jolly Baniel and NOEL BANIEL, to RECLUSION PERPETUA, with all the accessory penalties provided for by law;

(b) Ordering said both accused, jointly and solidarily, to pay the heirs of the victim, Nicasio Caluag, the following amounts:

1. Actual or compensatory damages in the total amount of P12,500.00;
2. Moral damages in the amount of P100,000.00; and
3. Death compensation in the amount of P50,000.00

Without subsidiary imprisonment in case of insolvency;

(c) Ordering both accused to pay the cost.”[2]

Appellants, thereafter, initiated this direct appeal, for which this Court appointed a counsel de oficio to represent them upon their manifestation that their lawyer in the court a quo moved abroad.[3]

The trial court’s findings of fact ably supported by evidence on record are as follows:[4]

“Nicasio Caluag was at the Furugganan Landing in Centro, Aparri, Cagayan at about 1:00 o’clock in the

afternoon of December 25, 1990. Furugganan Landing is the port or landing place of small ferryboat plying between Centro, Aparri and its barrios Linao, Sanja and Kaalintaan. Nicasio Caluag was from Linao, Aparri, Cagayan (TSN's, December 10, 1991, pp. 3-4; December 16, 1991, pp. 3-4).

"When he was there in the port of landing, his daughter Jenny Caluag, his nephew Bongbong Santaren and many other persons were also there as it was Christmas (TSN, December 10, 1991, p. 4; TSN, December 16, 1991, p. 3).

"Nicasio Caluag was buying some mangoes near the fishport building at the landing place and when he stooped to pay for the mangoes, the accused Jollymer Baniel alias Jolly Baniel, surreptitiously approached Caluag from behind and stabbed Caluag with a knife (Exhibit "C") at his back. Caluag fell on the ground, face upward, and Jollymer Baniel again stabbed Caluag on his body. Caluag suffered eight stab sounds, one incise wound and one hack wound (TSN, December 10, 1991, pp. 4-5; TSN, December 16, 1991, pp. 4-5, 8, 12).

"In that moment, the accused Noel Baniel also joined his brother Jollymer in stabbing Caluag. Noel used a knife (Exhibit "D") in stabbing Caluag several times on different parts of his body (TSN, December 10, 1991, pp. 5-6; TSN, December 16, 1991, pp. 5,8-9, 12-13).

"Thereafter, the brothers Baniel fled but a policeman, Pat. Lao, arrived in the scene. Noel Baniel was arrested or (sic) he surrendered himself to the policeman who brought him to the police precinct near the market and Jollymer Baniel went along with them (TSN, December 10, 1991, p. 11; TSN, December 16, 1991, pp. 9-10; TSN, January 8, 1992, pp. 5-7, 10-11).

"Thereafter, the brothers Baniel were locked up in jail and were later on transferred to the police headquarters in Aparri, Cagayan (TSN, January 8, 1992, pp. 10-11).

"The dead body of Nicasio Caluag was brought to a funeral parlor and Dr. Romulo de Rivera conducted a post mortem examination on the body. Dr. de Rivera found the following wounds which he indicated in his post mortem examination report (Exhibit "E") (TSN, January 9, 1992, p. 3)". (enumeration of wounds omitted)

Appellants differ in their respective defenses. Appellant Noel invokes self-defense in killing the victim who allegedly attacked the former with a knife, whereas appellant Jolly denies any participation in the crime imputed to them and invokes alibi.

To avail of the benefit of self-defense, appellant Noel, as the party invoking it has burden of proving:[5]

- unlawful aggression,
- reasonable necessity of the means employed to prevent or repel it, and
- lack of sufficient provocation on the part of the person defending himself

by clear and convincing evidence to justify his felonious acts.[6] Otherwise, conviction will follow from his admission as author of the crime.[7] Upon examination of the record, appellant Noel failed to discharge this burden since the principal element of unlawful aggression was not proven. Unlawful aggression presupposes an actual, sudden and unexpected attack on the file or limb of a person or an imminent danger thereof, and not merely a threatening or intimidating attitude. There must be real danger to the life or personal safety of the person claiming self defense.[8] In the case at bench, the victim, a detention prisoner,[9] was stooping to pay the mangoes he was buying and had his back turned against appellants. At that instance, appellant Jolly, armed with a bolo, surreptitiously attacked the victim from behind inflicting a fatal wound on the latter's back.[10] The victim, surprised by the attack and wounded was rendered helpless and defenseless when almost successively appellant Noel stabbed him with a 6-inch knife.[11] When the victim fell down, appellant Noel continuously stabbed the former causing more wounds.[12] Of the ten (10) wounds found on the victim's body, seven (7) were fatal.[13]

The manner appellants executed the attack tends directly and specially to insure its execution without risk to themselves against any possible defense that the victim might offer.[14] This constitutes treachery – and when the act is attended by treachery on the part of the offender, it could not be said that there was unlawful aggression on the part of the offended party, because the facts constituting the treachery would be inconsistent not only with offended party’s alleged unlawful aggression but also irreconcilable with the offender’s claim that he was merely acting in self-defense. For one, treachery presupposes a deliberate design to cause a wrongful act, whereas, self-defense injects the thought that the defendant’s action was the product of necessity. For another, there is a high degree of depravity in treachery which is not present in self-defense. With the sore absence of the primordial element of unlawful aggression, the other requisites of self-defense would have no leg to stand on.[15] Accordingly, that same treachery which negated unlawful aggression was properly appreciated by the trial court as the circumstance that qualified the killing to murder.[16]

Appellant Noel posits that there was unlawful aggression on the part of the victim when the latter raised his right hand armed with a knife and attempted to stab the former. He further asserts that he (Noel who was allegedly left-handed) grabbed the victim’s raised right hand with his both hands. It was at this instance that appellant Noel took out a knife with his left hand and stabbed the victim. However, the Court agrees with the trial court’s finding that the proffered excuses of appellant Noel are “incredible and unbelievable.”[17] Thus,

“Noel Baniel in describing the body of Caluag compared him to Mr. William Lumabas, the Process Server of this court, by saying that Caluag’s hands are all of the same size as those of Mr. Lumabas; Caluag was taller than Mr. Lumabas who is 5’5”, and Caluag was also stouter than Mr. Lumabas who is 120 lbs. With the comparison in the said description, it can be seen that Noel Baniel who is very much slimmer or thinner than Mr. Lumabas, is therefore very much more shorter, smaller and weaker than Caluag or, conversely, the victim was very much taller, bigger or heavier and stronger than the defendant Noel Baniel. (see TSN, Feb. 11, 1992, pages 20 and 21 and TSN, Feb. 12, 1992, page 18). Baniel could not, under such condition, easily hold the hand of Caluag which was thrusting a knife and raised it above his (Caluag’s) head. Could Noel Baniel do it while the left hand of Caluag was free? Could Noel maintain his right hand above the latter’s head and with Noel’s left hand drew his own knife and stabbed the frontal part of Caluag’s body? Consider these questions in relation to the description of the bodybuilt of the duo and the fact that Noel Baniel claims to be left-handed. Could Noel’s right hand overpower Caluag’s right hand? (see TSN, page 12 and page 19);”[18]

Besides, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense. The necropsy report of the examining physician stated that the victim suffered stabbed, incised and hacked wounds on the vital parts of his body from the neck to the chest, stomach, arms and back near the hipline.[19] The gravity of these wounds is indicative of a determined effort to kill and not just to defend.[20]

With respect to appellant Jolly’s defense of alibi, again such defense is weakened in this case by the trial court’s finding that it was a “mere concoction and fabrication.”[21] Such alibi falls when juxtaposed with the testimony of credible witnesses who actually saw and positively identified appellant Jolly as the one who initiated the attack on the victim.[22] Alibi is “inherently weak and unreliable, it is easy of fabrication[23], without much opportunity at checking or rebutting it”[24] and will not prosper if it is established mainly by the accused or his relatives and not by credible persons.[25]

Appellant Jolly failed to strictly satisfy the two conditions of alibi respecting time and place.[26] Well entrenched is the doctrine that for alibi to prosper, the defendant must prove not only (1) that he was somewhere else when the crime was committed but (2) it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[27] Both elements are wanting in this case. Appellant Jolly was at the place of the crime (Furugannan Landing) at the time of the incident. It was not shown that he was somewhere else as to be physically absent therefrom.

In addition, appellant Jolly's denial aside from being inherently weak,[28] like his alibi,[29] easily crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that the former was at the scene of the incident and was one of the victim's assailants and perpetrators of the crime.[30] Applicable herein is the Court's ruling in *People v. Paragua*,[31] that:

"Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witness who testify on affirmative matters."

Be that as it may, evidence on record attests that appellant Noel used a 6-inch knife Jolly used a bolo about a foot long.[32] From this proven fact, the lower court correctly deduced that:

"The knife (Exhibit "D") of Noel Baniel could not have caused Wound No. 6 which is 4 cm x 1.1 cm x .16 cm in depth, because the blade of said knife is narrow, only 1.5 cm wide while the wound (sic) is 4.0 cm wide and 16 cm deep. It could not have also caused Wound No. 8, a hack wound, because said wound is wide, long and deep, but Exhibit "C", the alleged bolo of Caluag (or Jollymer Baniel) could have caused said wounds (see TSN, January 9, 1992, pages 18 and 19, testimony of Dr. de Rivera). So why does Noel Baniel claim only one (1) knife (Exhibit "D") was used in wounding Caluag?

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"x x x wound No. 6, which is a deep stab wound, could have only been inflicted by the knife (Exhibit "C") used by Jollymer Baniel in stabbing Caluag. Said wound No. 6 is considered fatal. It is also shown that wound No. 6 could not have been inflicted by the knife (Exhibit "D") of Noel Baniel but could have been inflicted by the knife (Exhibit "C") used by Jollymer Baniel. It is further shown that the knife (Exhibit "C") of Jollymer Baniel and the knife (Exhibit "D") of Noel Baniel could have inflicted the other fatal stab wounds." [33]

As to appellants' contention that the trial court erred in not conducting an ocular inspection of the crime scene "thereby disregarding the(ir) right to a speedy disposition of the case"[34] – this is non-sequitur. On the contrary, by dispensing with the ocular inspection, the trial court avoided a delay of the case. At any rate, ocular inspection rests within the sound discretion of the court. Inspection may be granted only where it is reasonably certain that it will be of substantial aid to the court in reaching a correct verdict. The trial court in this case, correctly refused to make the inspection where testimonial evidence adequately pictured the condition of the place. Thus, a view of the place would serve no useful purpose.[35]

Appellants next dispute the finding of conspiracy. A conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[36] It need not be established by direct proof.[37] It would suffice if the acts of the conspirators are characterized by unity of purpose, intent and design to achieve a common unlawful end. It may even be inferred from the conduct of the accused before, during and after the commission of the crime.[38] In the case at bench, appellant Jolly suddenly attacked the victim from behind and subsequent thereto, appellant Noel joined the fray stabbing the victim from the front. Appellants' actions of "helping or assisting each other in simultaneously stabbing or inflicting wounds on the victim" are "clear and indubitable proof(s)"[39] of a concerted effort to bring about the death of the victim.[40] Thus, appellants as conspirators are equally liable for the crime[41] as it is unnecessary to determine who inflicted the fatal wounds[42] because in conspiracy, the act of one is the act of all.[43]

In the final analysis, appellants' argument depend on the trial court's finding of facts and its assessment of the credibility of witnesses.[44] Jurisprudence is settled that the trial court's findings of fact when ably supported by substantial evidence on record are accorded with great weight and respect by this Court. Thus, upon review, the Court finds that no material facts were overlooked or ignored by the court's below which if considered might vary the outcome of this case nor there exist cogent reasons that would warrant reversal of the findings below.[45]

Further, the trial court did not err in giving credence to the testimonies of the prosecution witnesses.[46] They cannot be discredited as unreliable and untrustworthy because of their relation to the victim. No law disqualifies relatives of the victim of a crime from testifying about the facts and circumstances of the crime. Relationship per se of a witness to the victim, whether by consanguinity or affinity, is no indicator of an impaired credibility of a witness nor would it affect his positive and clear testimony and render it unworthy. On the contrary, relationship with a victim deter a witness from indiscriminately implicating anybody to the crime. His natural and usual interest would be to identify the malefactor and secure his conviction to obtain true justice for the death of a relative. This is specially so when the witnesses were present at the scene of the crime, as in the case at bench.[47] Needless to say, the question of credibility of witnesses is best left to the trial court since it is in the best position to make an honest evaluation of the witnesses' deportation during trial.[48] Such evaluation binds this Court as the proffered inconsistencies (like the number of times the victim was stabbed and the place where he fell after he was stabbed) in the prosecution witnesses' testimonies do not substantially affect the result hereof.

Lastly, contrary to the trial court's ruling, appellants should have been entitled to the mitigating circumstance of surrender, though they never told the responding police officer that they were surrendering. Appellant Noel's declaration to the police of "Nakadisgracia nak"[49] and his action together with appellant Jolly of spontaneously and unconditionally placing themselves at the disposal of the authorities are, under the factual milieu of this case, indicia of their respect for the law by saving the time and effort of the authorities attendant to the search.[50] A categorical declaration of a voluntary surrender is not necessary as the action of appellants in moving towards the responding police officer, surrendering a weapon,[51] seeking police protection and telling the police of what they did are mute words sufficient to satisfy the rationale of a voluntary surrender as a mitigating circumstance.

Prior to R.A. 7659,[52] murder was penalized with "reclusion temporal maximum to death".[53] In accordance with the graduation of penalties under Article 64(2) of the Revised Penal Code, when there is a mitigating circumstance (surrender) and no aggravating circumstance, as in this case, the imposable penalty is the minimum period which is reclusion temporal maximum. Applying the Indeterminate Sentence Law (ISL), appellants could be held to bear the indeterminate penalty of anywhere from ten (10) years and one (1) day of prision mayor maximum to 17 years and four (4) months of reclusion temporal medium, as the minimum penalty, to anywhere from seventeen (17) years, four (4) months and one (1) day to twenty (20) years of reclusion temporal maximum, as the maximum penalty.[54]

We note, however, the amount of moral damages awarded by the trial court is too excessive in the light of the factual circumstances of the case and should be reduced.

WHEREFORE, the decision of the Regional Trial Court is AFFIRMED subject to the MODIFICATIONS that appellants Noel and Jolly Baniel are sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. The monetary awards (compensatory damages and death indemnity totaling P72,500.00) are AFFIRMED except that the moral damages is reduced to one thousand pesos (P1,000.00).

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Regional Trial Court Records, p.60.

[2] RTC Decision dated October 14, 1992 penned by Judge Antonino A. Aquilizan, p. 26; Rollo, p. 46.

[3] Appellants counsel de parte was Atty. Felipe R. Tumacder of Lal-lo, Cagayan. In a resolution of this Court on

November 8, 1993, Atty. Arturo T. Del Rosario, Jr. of Del Rosario and Del Rosario Law Offices was appointed their counsel de oficio. Rollo, pp. 53, 56.

[4] Rollo, pp. 233; RTC Decision, p. 11.

[5] Article 11 (1) Revised Penal Code; *People v. de Gracia*, G.R. No. 112984, November 14, 1996; *People v. Tampon*, G.R. No. 105583, July 5, 1996; *People v. Cabiles, et al.*, G.R. No. 115216, July 5, 1996.

[6] *People v. Tamparong, Jr.*, 149 SCRA 584 (1995); *People v. Nuestro*, 310 Phil. 221.

[7] *People v. Gregorio*, 255 SCRA 38 (1996).

[8] *People v. Patotoy*, G.R. No. 102058, August 26, 1996.

[9] The victim who was supposedly detained at the Cagayan Jail is one of those charged in another case for the killing of appellant's brother.

[10] TSN, Jenny Calaug, December 16, 1991, pp. 4-5.

[11] TSN, Bongbong Santaren, December 10, 1991, p. 17.

[12] Rollo, p. 26.

[13] Rollo, p. 24-25.

[14] Article 14 (16), Revised Penal Code.

[15] *People v. Alba*, 256 SCRA 505 (1996).

[16] *People v. Villanueva*, 316 Phil. 930; Article 248, Revised Penal Code.

[17] Rollo, p.35.

[18] *Ibid.*

[19] Exhibit "E".

[20] *People v. Santos*, 255 SCRA 309 (1996); *People v. Halili*, 315 Phil. 351; *People v. Maceda*, 197 SCRA 499.

[21] RTC Decision, p. 17; See *People v. Rosario*, 316 Phil. 810.

[22] See *People v. Esguerra*, 256 SCRA 657 (1996); *People v. Alban*, 315 Phil. 597; *People v. Ramos*, 315 Phil. 435.

[23] *People v. Calope*, 229 SCRA 413 (1994).

[24] *People v. Matildo*, 230 SCRA 635 (1994) cited in *People v. Tazo*, G.R. No. 118099-100, August 22, 1996.

[25] *People v. Pano*, 256 SCRA 52 (1996); *People v. Flores*, 195 SCRA 295.

[26] *People v. Tazo*, *supra.*; *People v. Rosario*, *supra.*

[27] *People v. Camat*, 256 SCRA 52 (1996); *People v. Alapan, et al.*, 315 Phil. 39; *People v. Silong*, 232 SCRA 487 (1994).

[28] *People v. Montierro*, 316 Phil. 950; *People v. Bausing*, 199 SCRA 355 Phil. 59.

[29] *People v. Alimon*, 257 SCRA 658 (1996).

[30] See *People v. Agustin*, 316 Phil. 828; *People v. Lopez*, 315 Phil. 59.

[31] 257 SCRA 118 (1996).

[32] TSN, Jenny Caluag, December 16, 1991, p. 9; Rollo, p. 22.

[33] RTC Decision, pp. 16, 21; Rollo, pp. 36, 41.

[34] Appellants' Brief, p. 50; Rollo, p. 126.

[35] 88 C.J.S. 120; *Springer v. Olcago*, 135 Ill. 553, 26 N.E. 314.

[36] Article 8, Revised Penal Code.

[37] *People v. Landicho*, G.R. No. 116600, July 3, 1996; *Arceno v. People*, 256 SCRA 569 (1996).

[38] *People v. Sotes*, G.R. No. 101337, August 7, 1996.

[39] Rollo, p. 40; RTC Decision, p. 10.

[40] *Sison v. People*, 250 SCRA 55 (1995).

[41] *People v. Sapurco*, 315 Phil. 561; *People v. Vitor*, 315 Phil. 419.

[42] *People v. Francisco*, 249 SCRA 326 (1995); *People v. Miranday*, 242 SCRA 620 (1995).

[43] *People v. Rivera*, 242 SCRA 26 (1995).

[44] *People v. Magalang*, 313 Phil. 823; *People v. Tami*, 313 Phil. 665; *People v. Quiñones*, 315 Phil. 48.

[45] *People v. Ferrer*, 255 SCRA 19, (1996).

[46] *People v. Ramos*, G.R. No. 110600, August 7, 1996.

[47] *People v. Sotes*, *supra*.

[48] *People v. Gracia*, G.R. No. 112984, November 14, 1996; *People v. Angeles*, 315 Phil. 23; *People v. Weding*, 316 Phil. 52; *People v. Sotto*, 255 SCRA 344 (1996).

[49] TSN, Noel Baniel, February 12, 1992, p. 8.

[50] *People v. Galaver*, 223 SCRA 310 cited in *People v. de Gracia*, *supra*.

[51] TSN, Noel Baniel, January 8, 1992, p. 13.

[52] The Death Penalty Law took effect on December 31, 1993 as stated in *People v. Martin Simon*, 234 SCRA 555, 569 (1994).

[53] Art. 248, Revised Penal Code.

[54] *People v. Patotoy*, *supra*.

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