

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO G. TALIMAN, BASILIO M. BAYBAYAN, AMADO B. BELANO, DANILO OBENIA AND RUFINO VALERA, JR., ACCUSED,

G.R. No. 109143. October 11, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Camarines Norte, Branch 40, Daet[1] finding accused Pedro Taliman, Basilio Baybayan and Amado Belano guilty beyond reasonable doubt of murder, sentencing each of them to reclusion perpetua and ordering them to pay the heirs of the victim, Renato Cuano, indemnity of fifty thousand pesos (P50,000.00), funeral expenses of ten thousand pesos (P10,000.00) and actual damages for unrealized income in the amount of one million forty six thousand pesos (P1,046,000.00). The trial court also ordered that alias warrants of arrest be issued against accused Danilo Obenia and Rufino Valera, Jr. who are at large.[2]

We state the facts.

The victim was Renato Cuano (hereinafter referred to as "Renato"). Prosecution witness Ernesto Lacson (hereinafter referred to as "Lacson") was the uncle and employer of Renato, who was the caretaker of his gravel and sand truck.[3]

On July 21, 1990, Renato came to see Lacson and informed him that armed and hooded persons[4] were asking for money amounting to six thousand pesos (P6,000.00). The amount was reduced to six hundred pesos (P600.00) and finally to two hundred pesos (P200.00).[5]

On July 22, 1990, Lacson arrived home from church. His wife handed him a letter delivered to her by a child. In the letter, purportedly members of the N.P.A. demanded eight thousand pesos (P8,000.00) from him.[6] We quote the letter:[7]

"Sayo TaTay Erning

"Rebolusyonaryong pagbati sa yo/

sa inyo layunin ng sulat kong ito upang ipahiwatig sa yo na ang pakikibaka pang kalawakang pakikibaka ay humihingi ng tulong sa iyo Tay "Erning" Siguro alam mo na amg aming pakay lalo na sa aming pangangailangan pinansyal upang magamit sa kilusan bigyan mo po kami ng halagang 8,000.00 at ito po ang aming inaasahan "okey" inaasahan ko po at maghihintay kami doon sa kabilang ilog papuntang nalisbitan dalhin mo ang "jeep" mo iyan ang aming palatandaan alas 4:00 p.m. July 22,90 inaasahan po namin ang iyong pakikipakaupira at inaasahan po namin na walang ibang makakaalam.

"Okey salamat sigi po maghihintay kami alas 4:00 mamaya.

MELCO GROUP

KA BONG

MABUHAY ANG N.P.A."

On the same day, at around eight o'clock in the morning (8:00 a. m.), Lacson instructed Renato to take his passenger jeep and to proceed to his "gold field" in Nalisbitan to get his collectibles from the field. This was the last time Lacson saw Renato alive.[8]

Also on the same day, Lacson told his employee,[9] prosecution witness Elizer Obregon (hereinafter referred to as "Elizer"), to go to the crossing of Nalisbitan,[10] the place mentioned in the letter to investigate who the persons demanding money were.[11]

Elizer complied and reached the place at around five o'clock in the afternoon (5:00 p.m.) of the same day.

Upon reaching the place, Elizer saw Renato and spoke with him. In the vicinity, Elizer saw accused Basilio Baybayan, Pedro Taliman and Amado Belano. At that time, accused Sgt. Pedro Taliman and C1C Basilio M. Baybayan were members of the Camarines Norte Constabulary/Integrated National Police Command.[12] Elizer saw two other civilians in their company.[13]

Elizer then saw accused Pedro Taliman and Basilio Baybayan take Renato[14] to a hilltop, where he was guarded by accused who were armed. Elizer heard one of the accused say that Renato must be taken as "he must be acting as a lookout (for Lacson)."[15]

Elizer then proceeded to Bagong Silang and reported to Lacson that Renato was taken by accused Pedro Taliman, Basilio Baybayan and Amado Belano.

A custodial investigation was conducted.

On July 23, 1990, Attorney Nicolas V. Pardo was mayor of Labo, Camarines Norte. He went to the police station upon invitation of police corporal Cereno to "assist" accused during their custodial investigation.[16] Accused executed extra-judicial statements, confessing to the commission of the crime.

It was during this custodial investigation that accused Basilio Baybayin confessed to prosecution witness Sgt. Bonifacio Argarin that he participated in the killing of Renato because Renato did not give them the money they were demanding. This confession was given without the assistance of counsel and was not reduced to writing.[17]

On July 23, 1990, police authorities, accompanied by accused Basilio Baybayan went to the place indicated in a sketch prepared by accused Pedro Taliman.[18] It was in the place indicated that they found the cadaver of Renato.[19] This was the same place or hilltop where prosecution witness Elizer saw Renato being guarded.[20]

On July 24, 1990, a medical officer of Labo, Camarines Norte issued a certificate of death of Renato Lacson Cuaño, stating as cause of death, the following:[21]

"Immediate cause : a. Irreversible shock due to massive hemorrhages

"Antecedent cause : b. Internal and External secondary to

"Underlying cause : c. Gunshot wound and multiple stab wounds."

On December 18, 1990, Provincial Prosecutor Pascualita Duran-Cereno filed with the Regional Trial Court, Camarines Norte an information for murder against accused Pedro Taliman, Basilio Baybayan, Amado Belano, Danilo Obenia and Rufino Valera, Jr. alleging:

"That on or about 5:00 o'clock in the afternoon of July 22, 1990, at Crossing of sitio Malisbitan, Brgy. Exiben,

municipality of Labo, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, with deliberate intent to kill, with treachery, evident premeditation and taking advantage of superior strength, assault, attack, stab and shoot one RENATO CUAÑO alias LAPOY, thereby inflicting upon the latter gunshot wound and multiple stab wounds on the different parts of his body, and which injuries were the proximate cause of the death of said Renato Cuano alias Lapoy, to the damage and prejudice of the heirs of the victim.

"CONTRARY TO LAW." [22]

On February 26, 1991, accused Pedro G. Taliman, Basilio M. Baybayan and Amado B. Belano were arraigned. They pleaded "not guilty." [23] Accused Danilo Obenia [24] and Rufino Valero, Jr. were not arraigned because they remained at large.

On March 21, 1991, accused waived the pre-trial conference [25] and trial ensued. [26]

On May 29, 1992, the trial court declared the case submitted for decision. [27]

On September 24, 1992, the trial court rendered a decision, the decretal portion of which provides:

"WHEREFORE, in view of the foregoing, the accused Pedro Taliman, Basilio Baybayan and Amado Delano are all found guilty beyond reasonable doubt of the crime of Murder as charged, and are hereby each sentence (sic) to suffer the penalty of reclusion perpetua (or life imprisonment) (sic). The accused are furthermore jointly and severally ordered to pay the heirs of the victim for his death the amount of fifty thousand pesos (P50,000.00) and for funeral expenses the amount of ten thousand (P10,000.00) pesos, and considering that the deceased victim was only 27 years old when killed and applying the formula $(2/3 \times [80-27])$ - life expectancy of the American Table of Mortality, said deceased victim has still 44 years more to live were he not killed by the accused. Therefore, since he was employed and receiving monthly salary of P2,000.00 his unrealized income for the 44 more years of his life is P1,046,000.00 for which the accused likewise are jointly and severally ordered to pay.

"Considering that accused Danilo Obenis and Rufino Valera, Jr., are still at large, let an alias Warrant of Arrest be issued against them. In the meantime, let the records of the case be archived and reinstated as soon as they are apprehended.

"SO ORDERED." [28]

On October 28, 1992, the decision was promulgated. [29] However, accused Basilio M. Baybayan was not present, [30] despite due notice. [31]

On October 30, 1992, the trial court issued a warrant for the arrest of accused Basilio M. Baybayan. [32] The warrant of arrest was returned unserved as he could not be found. [33]

On November 11, 1992, accused Pedro G. Taliman filed a notice of appeal with the trial court. [34]

On May 26, 1993, we resolved to accept the appeal. [35]

We state at the onset that while counsel for accused represents all five accused in this appeal, the benefit of this appeal is only accorded accused-appellants Pedro G. Taliman, Basilio M. Baybayan [36] and Amado B. Belano.

The other two accused Danilo Obenia and Rufino Valera, Jr., were not arraigned. [37] Thus, the trial court did not acquire jurisdiction over their persons.

The rule on trial in absentia cannot apply to Danilo Obenia and Rufino Valera, Jr. In *People v. Salas*, [38] the Court declared that one of the requisites for trial to proceed in absentia is that the accused had been arraigned.

Now, the merits.

Accused-appellants submit that the extra-judicial confessions on which the trial court relied were inadmissible in evidence because they were obtained in violation of their constitutional rights.[39] We agree with accused-appellants on this point. The extra-judicial statements alone cannot be a basis for conviction.

Article III, Section 12 (1) of the Constitution provides:

"Any person under custodial investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel (underscoring ours)."

Mayor Pardo cannot be considered as an independent counsel for accused during their custodial investigation.

In *People v. Culala*,[40] we held that the extra-judicial confession of the accused-appellant was inadmissible as he was "assisted" by the incumbent municipal attorney. In *People vs. Bandula*,[41] we held that a municipal attorney could not be an independent counsel as required by the Constitution. We reasoned that as legal officer of the municipality, he provides legal assistance and support to the mayor and the municipality in carrying out the delivery of basic services to the people, including the maintenance of peace and order. It is therefore seriously doubted whether he can effectively undertake the defense of the accused without running into conflict of interests.

Besides, lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are suspects. In many areas, even less obvious than that obtaining in the present case, the relationship between lawyers and law enforcement authorities can be symbiotic.[42]

If in the aforecited cases, we disregarded the extra-judicial statements of the accused, how much more must we do so now, given that it was the mayor himself, and not just the provincial attorney, that assisted accused-appellants?

Even assuming that the right to counsel was orally waived during custodial investigation,[43] still the defect was not cured. The Constitution expressly provides that the waiver must be in writing and in the presence of counsel.[44] This, accused-appellants did not do.

However, while we agree that the extra-judicial statements of the accused are inadmissible in evidence, we find that there is still sufficient evidence to convict.

While no one saw the actual killing of Renato, circumstantial evidence proved its commission. Resort to circumstantial evidence is essential, when to insist on direct testimony would set felons free.[45]

Rule 133, Section 4 of the 1989 Revised Rules on Evidence provides:[46]

"SEC. 4. Circumstantial evidence, when sufficient - Circumstantial evidence is sufficient for conviction if:

"(a) There is more than one circumstance;

"(b) The facts from which the inferences are derived are proven; and

"(c) The combination of all the circumstances is such as to produce conviction beyond reasonable doubt."

In the present case, we find the following circumstances attendant:

First, Renato was last seen alive in the company of accused-appellants. This was the substance of Elizer's testimony. The trial court did not find reason not to believe him. Neither do we.

It is the trial court and not this Court that had the opportunity to observe Elizer's manner of testifying, his furtive

glances, his calmness, sighs or the scant or full realization of his oath.[47] The trial court's assessment of the credibility of witnesses is entitled to respect.[48]

Second, accused-appellants, two other civilians, Renato and Elizer were the only persons present at the Nalisbitan crossing, on July 22, 1990, at five o'clock in the afternoon. The place and the time are significant. This was the very place, the very date and more or less the time of day indicated in the letter of demand that Lacson received.[49] While Renato's and Elizer's presence in the area was explained, the presence of accused-appellants in that area and during that crucial time can be only explained by the fact that accused-appellants were the very ones demanding money from Lacson.

"Facts or circumstances which are not only consistent with the guilt of the accused but also inconsistent with his innocence, constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court." [50]

Third, motive is apparent. Renato was first approached by accused-appellants with an oral demand. Renato relayed the demand to Lacson. [51]

The oral demand was followed up with a written demand.[52]

When Renato passed through the Nalisbitan crossing, he was driving Lacson's jeepney. This was the very jeepney indicated in the letter. The letter instructed Lacson to bring money and to drive a specific jeepney to Nalisbitan. Yet, when accused-appellants confronted Renato, he did not have the money they demanded.

The fact that Renato was the driver of the jeepney indicated in the letter can explain accused-appellants' reason for killing him.

This conclusion is supported by Elizer's testimony. We quote the pertinent portions:[53]

"q.

Now, you said you were requested by Mr. Lacson to proceed to that crossing of Nalisbitan for you to see the person who was demanding money and identified themselves as members of NPA. Were you able to go to that place?

a.

Yes, sir.

q.

What time was that?

a.

I reached the place more or less 5:00 o'clock in the afternoon of that same date July 22, 1990, sir.

q.

What did you do when you reached that Nalisbitan Crossing?

a.

Upon reaching the place at the crossing of Nalisbitan I have talked with Renato Cuaño who asked where I was going. I have not confided to him that I was doing surveillance work on the person demanding money from Ernesto Lacson and so I proceeded. I walked and upon reaching a point I have seen Basilio Naybayan in the company of two (2) civilians and I continued with my walk and ahead of them I saw Mr. Taliman with Belano

and I did not notice that I was followed by Mr. Renato Cuaño.

xxx

a.

I saw, sir, Renato Cuaño was taken by Mr. Taliman and Belano, sir.

xxx

q.

Now, when you go back taking the same route what did you see if any?

a.

When I was on my way back taking the same route my way was blocked by Belano and Taliman accompanied by civilian and inquired from me whether I was the driver of the jeep.

q.

What was your answer if any?

a.

I denied being the driver of the jeep, sir.

q.

Why did you deny being the driver of the jeep?

a.

I denied being the driver of the jeep because I saw already Renato Cuaño on top of the hill on a cut guarded by Baybayan with a civilian in their company, sir.

xxx

q.

The question of this Court is why did you say that this Renato Cuaño is being guarded?

a.

They are guarding Renato Cuaño, sir, because that is the person they have conferred with to whom they have relayed the demand of money and he is the driver of the jeep. He is the one who pretended to be the driver of the jeep.

xxx

q.

Now, when Amado Belano asked you whether you know Renato Cuaño and you denied it, what more did Amado Belano ask you if any?

a.

Amado Belano further made a statement that it is better for them to take along that man, referring to Renato Cuaño, because Renato Cuaño might be acting as a lookout."

The letter[54] provided that "no one else should know"[55] about the demand. Thus, Renato's presence would naturally alarm accused-appellants.

Motive is a key element when establishing guilt through circumstantial evidence.[56] Coupled with enough circumstantial evidence or facts from which it may be reasonably inferred that the accused was the malefactor, motive may be sufficient to support a conviction.[57]

Fourth, Renato's corpse was discovered in the same place where he was held and guarded by accused-appellants.[58]

Fifth is the facts of death of Renato, which is the corpus delicti of the crime.

However, while Renato's death in the hands of accused-appellants was proven, we find that the manner of killing was not so evidenced. There was no showing of treachery.

Treachery exists when the accused employs means, methods, and forms which directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[59] Treachery, like the crime itself, must be proved beyond reasonable doubt.[60]

In the absence of proof as to how the killing was perpetrated, the crime committed was homicide.[61]

The imposable penalty for homicide is reclusion temporal. In the absence of any mitigating or aggravating circumstances, the penalty is imposed in its medium period.[62] The Indeterminate Sentence Law applies.

The trial court awarded the heirs of Renato Cuaño one million forty six thousand pesos (P1,046,000.00) as actual damages for unrealized income. We delete this award as it is not supported by receipts. The testimony of Renato's father as to how much Renato was earning at the time of his death is self-serving and hearsay.

The trial court's award of actual damages for funeral expenses in the amount of ten thousand (P10,000.00) pesos is likewise deleted. The claim is not supported by any receipt. The rule is that every pecuniary loss must be established by credible evidence before it may be awarded.[63]

An award of moral damages in the amount of fifty thousand pesos (P50,000.00) is proper.[64] Renato's father testified that because of his son's death, he felt "great pain" and his wife suffered some "sleepless nights" and "cried for several days." [65]

The trial court's award of fifty thousand pesos (P50,000.00) as civil indemnity for wrongful death is affirmed. This can be awarded without need of proof other than the death of the victim.[66]

WHEREFORE, the decision of the Regional Trial Court, Camarines Norte, Branch 40, Daet, dated September 24, 1992 is **AFFIRMED** with **MODIFICATION**. Accused-appellants Pedro G. Taliman, Basilio M. Baybayab and Amado B. Belano are found guilty beyond reasonable doubt of **HOMICIDE**, defined and penalized under Article 249 of the Revised Penal Code, and in the absence of any modifying circumstance, are sentenced to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

Accused-appellants are jointly and severally ordered to pay the heirs of Renato Cuaño, moral damages in the amount of fifty thousand pesos (P50,000.00) and civil indemnity in the amount of fifty thousand pesos (P50,000.00). The award of actual damages for funeral expenses and unrealized income is **DELETED**.

The case is archived as to accused Danilo Obenis and Rufino Valera, Jr., until their arrest and submission to the jurisdiction of the trial court.

Costs against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. 6822, Decision dated September 24, 1992, Judge Luis D. Dictado, presiding.

[2] The same decision ordered that the records of the case be archived, the case to be reinstated against Danilo Obenia and Rufino Velera, Jr. upon their arrest.

[3] Supra, p. 19.

[4] TSN, July 10, 1991, p. 27.

[5] TSN, June 19, 1991, p. 21.

[6] Supra, p. 22.

[7] Trial Court Records, Exhibit "A", p. 1.

[8] TSN, July 10, 1991, p. 28.

[9] TSN, May 17, 1991, p. 8.

[10] Located at Barangay Exhiban, Labo, Camarines Norte.

[11] TSN, June 19, 1991, p. 23.

[12] The two accused-appellants were discharged from the Military Service and turned over to civilian authorities to face the present murder charge on November 22, 1990. (Trial Court Record, p. 2).

[13] Supra, p. 14.

[14] Supra, p. 15.

[15] Supra, p. 20.

[16] TSN, June 19, 1991, pp. 2-18.

[17] TSN, August 7, 1991, pp. 11-21.

[18] Ibid., p. 10; Trial Court Record, p. 6.

[19] Ibid., p. 31.

[20] TSN, May 17, 1991, pp. 28-29.

[21] Trial Court Record, p. 6.

[22] Rollo, p. 1.

[23] Trial Court Record, pp. 48-49.

[24] Trial Court Record, p. 46.

[25] Trial Court Record, p. 57.

[26] On January 25, 1991, accused-appellant Pedro Taliman executed a waiver which stated that should he fail to appear at the trial without justification, despite due notice, trial may proceed in absentia (Trial Court Record, p. 69).

[27] Ibid.

[28] Rollo, p. 30.

[29] Trial Court Record, p. 175.

[30] Accused-appellant Basilio Baybayan through Plaridel Insurance Corporation filed a surety bond on October 29, 1991, in the amount of thirty thousand pesos (P30,000.00), which was approved by the trial court on the same date (Trial Court Record, pp. 103, 106).

[31] Trial Court Record, p. 171.

[32] Ibid., p. 177.

[33] Ibid., p. 178.

[34] Rollo, p. 31.

[35] Rollo, p. 35.

[36] The Rules of Court, Rule 120, Sec. 6 provides, "xxx The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel."

[37] Presence during arraignment is essential as it goes into the very core of the accused's right "to be informed of the nature and cause of the accusation against him, 1985 Rules on Criminal Procedure, as amended, Rule 115, Section 1 (b)."

[38] 143 SCRA 163 (1986).

[39] Rollo, pp. 105-110.

[40] G. R. No. 83466, October 13, 1999.

[41] 232 SCRA 566 (1994).

[42] People v. Juanario, 335 PHIL 268 (1997).

[43] TSN, September 11, 1991, p. 8.

[44] Philippine Constitution, Article III, Section 12 (1).

[45] People v. Gonzales, G. R. No. 138402, August 18, 2000.

[46] People v. Sison, G. R. No. 123183, January 19, 2000.

[47] People v. Diaz, 262 SCRA 723 (1996); People v. Vereno, 264 SCRA 546 (1996); People v. Gonzales, G. R. No. 138402, August 18, 2000.

[48] People v. Juntilla, G. R. No. 130604, September 16, 1999; People v. Lomerio, G. R. No. 129074, February 28, 2000; People v. Antonio, G. R. No. 128149, July 24, 2000.

[49] The letter instructed Lacson to bring the money to the Nalisbitan crossing at four o'clock in the afternoon.

[50] People v. Alberca, 257 SCRA 613, 632 (1996), citing People v. Abitona, 240 SCRA 335 (1995).

[51] TSN, July 10, 1991, p. 27.

[52] Supra, p. 22.

[53] TSN, May 17, 1991, pp. 13-16, 20

[54] Trial Court Records, p. 1 (Exhibit "A").

[55] " inaasahan po namin na walang ibang makakaalam."

[56] People v. Yip Wai Ming, 264 SCRA 224 (1996); People v. Villarin, 269 SCRA 630 (1997).

[57] People v. Bernal, 274 SCRA 197 (1997).

[58] TSN, May 17, 1991, pp. 28-29.

[59] People v. Mindanao, G. R. No. 123095, July 6, 2000.

[60] People v. Israel, 272 SCRA 95, 110, citing People v. Genobia, 234 SCRA 699, 709 (1994); People v. Adoc, G. R. No. 132079, April 12, 2000.

[61] People v. Pantorilla, G. R. No. 122739, January 19, 2000.

[62] People v. Santos, G. R. No. 122935, May 31, 2000.

[63] People v. Canasares, G. R. No. 123102, February 29, 2000; People v. Enguito, G. R. No. 128812, February 28, 2000, People v. Mindanao, supra.

[64] People v. Ereno, G. R. No. 124706, February 22, 2000.

[65] TSN, October 4, 1991, pp. 4-5.

[66] People v. Baluran, G. R. No. 113940, February 15, 2000; People v. Tolibas, G. R. No. 103506, February 15, 2000; People v. Mindanao, G. R. No. 123095, July 6, 2000.

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