

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER HEREDIA @ BOLL JACK, ALEXANDER RUBIO AND NELSON LYNSON CHUA, ACCUSED, ELMER HEREDIA, ACCUSED APPELLANT.

G.R. No. 110001. July 28, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This case was certified to this Court pursuant to Section 13, Rule 124[1] of the Rules of Court from a decision rendered by the Court of Appeals[2] in C.A.-G.R. CR No. 11372 which modified the decision of the Regional Trial Court[3] (RTC) of the City of Mandaue, Branch 28 in Criminal Case No. DU-1218, by increasing the penalty imposed on the accused to reclusion perpetua.

Elmer Heredia, also known as Boll Jack, Alexander Rubio and Nelson Lynson Chua were charged with the crime of murder in an information[4] that reads:

"That on or about the 18th day of May, 1989, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and helping one another, with intent to kill and with evident premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one Innocentes Tan, thereby inflicting upon the latter mortal injuries at the vital portion of his body which caused his death shortly thereafter.

CONTRARY TO LAW."

On November 29, 1989, Heredia was arraigned and pleaded not guilty to the crime charged.[5] His co-accused, Alexander Rubio and Lynson Chua, are still at large.

On May 7, 1991, the RTC rendered its decision finding the accused guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

"WHEREFORE, finding the herein accused Elmer Heredia GUILTY beyond reasonable doubt for the crime of Murder, said accused is hereby sentenced to an indeterminate penalty by imprisonment of 12 years, 5 months and 11 days of reclusion temporal as minimum to reclusion perpetua as maximum with the accessories of the law and to indemnify the legal heirs of Innocentes Tan the amount of P30,000.00 and to pay the cost."

Heredia appealed to the Court of Appeals which adopted the findings of facts of the RTC to wit:

"Prosecution witness Franklin Saplal together with the deceased Innocentes Tan and accused Elmer Heredia were co-workers at El Marino Bar and Restaurant located in Mandaue City.

On May 18, 1989 at around 2:30 in the morning, witness Franklin Saplal together with the deceased Innocentes Tan and Sonny Boy Rosello, went out of El Marino Bar and Restaurant in order to go home, when someone from the group of Elmer Heredia threw a bottle to them and because of fright they ran away. However, while running away, he noticed that the deceased Innocentes Tan who was a little bit behind him was overtaken by the

group of Elmer Heredia who were pursuing them and thereafter, he saw Lynson Chua held the hands of Inocentes Tan and accused Alexander Rubio holding the hair of the deceased Inocentes Tan while accused Elmer Heredia delivered a stabbing blow towards the deceased Inocentes Tan and when the deceased Inocentes Tan was already lying on his back on the ground, accused Elmer Heredia squatting over him and still stabbing him, he and Sonny Boy Rosello ran towards the police station to report the incident and when they came back they were already together with the policemen.

Upon arrival at the vicinity of the El Marino, they saw that Inocentes Tan was already lying down and noticed that there was still life on him so they brought him to the Cortes General Hospital but before their arrival thereat Inocentes Tan already died.

Sonny Boy Rosello informed the family of the deceased Inocentes Tan and the brother of the deceased by the name of Jose Tan Jr. made arrangement for the dead body of Inocentes Tan to be taken care of by the Cosmopolitan Funeral Homes. xxx"[6]

The Court of Appeals modified the RTC's decision by increasing the penalty imposed to reclusion perpetua, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered DISMISSING the appeal. The decision of the lower court is, however, MODIFIED as follows:

WHEREFORE, finding herein accused-appellant ELMER HEREDIA alias Boll Jack, GUILTY beyond reasonable doubt of the crime of Murder, he is hereby sentenced to suffer the penalty of Reclusion Perpetua with the accessories of the law, and to indemnify the legal heirs of Inocentes Tan in the amount of P50,000.00 and to pay the costs.

The accused being a detention prisoner shall be credited in the service of his sentence full time during which he has undergone preventive imprisonment.

In the meantime, since accused Nelson Lynson Chua and Alexander Rubio are still at large and have not as yet been brought under the jurisdiction of the Court and in order that the case may not remain indefinitely pending in the calendar of the Court, let the case be ARCHIVED as against them subject to be revived upon their arrest."

The case and its entire records were elevated to this Court pursuant to Section 13, Rule 124 of the Rules of Court.

In this appeal, the accused-appellant assigns the following errors:

- THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS POSITIVE IDENTIFICATION.
- THE TRIAL COURT ERRED IN REGARDING AS MINOR MATTER THE DISCREPANCY BETWEEN THE PHYSICAL FACTS AND THE TESTIMONY OF THE EYEWITNESS.
- THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE LONE EYEWITNESS.
- THE TRIAL COURT ERRED IN HOLDING THAT CONSPIRACY WAS DULY PROVED.[7]

The accused-appellant denies that he participated in the commission of the murder of Inocentes Tan together with Nelson Lynson Chua and Alexander Rubio. In fact, he claims that he only came to know the names of the deceased at the police station when he was arrested. He argues that the lone eyewitness, Frankie Saplad, whose testimony was vague, ambiguous and contradictory, did not positively identify him. He contends that since he and Saplad were co-workers, Saplad knew who he was and should have identified him by name when the initial investigation was conducted at the scene of the incident. He adds that his identification was influenced by the extrajudicial confessions of the two other accused who claimed that they each held the hand and hair of the

victim, Innocentes Tan, while Elmer Heredia repeatedly stabbed the deceased. He also claims that the testimony of PNP Medico Legal Officer Jesus P. Cerna that the location of the stab wounds on the victim indicates that he was stabbed while standing up and facing the assailant belies the testimony of Saplad who claims that the accused allegedly stabbed the victim while the victim was lying on his back. Finally, he alleges that the actions of Saplad and his companions, Tan and Rosello, are contrary to human nature; if the accused-appellant and his co-accused in fact harassed them, it would have been more logical for them to seek safety inside the bar as they were employees thereof.[8]

The appellee counters that the fact that Saplad did not know the accused-appellant by name does not preclude the witness from recognizing the accused as one of the three men responsible for the death of Innocentes Tan. Moreover, the appellee argues that Saplad testified as to what he saw as it occurred while the medico-legal officer only based his answers on his examination of the dead body of Tan which were premised on mere conjectures and probabilities. At any rate, both the testimonies of Saplad and the medico-legal officer are consistent with respect to the fact that Tan died of the stab wounds. Lastly, appellee stresses there is nothing in the records that supports the accused-appellant's claim that the decision of the RTC was predicated on the extrajudicial confessions made by accused-appellant's co-accused.[9]

We resolve to deny the appeal.

Accused-appellant attacks the credibility of the lone eyewitness, Frankie Saplad.

We do not see anything vague, ambiguous or contradictory in Frankie Saplad's testimony. On the contrary, Saplad's narration of the events that transpired on May 18, 1989 was explicit and straightforward and he positively identified the accused-appellant as the one who stabbed Innocentes Tan:

"FISCAL FLORES TO SAPLAD:

Q: Mr. Saplad, do you know the accused, Elmer Heredia in this case?

A: Yes.

Q: Why do you know him?

A: Because we are co-workers.

Q:

Where?

A: In El Marino.

Q: You mean El Marino Bar and Restaurant herein Mandaue City?

A:

Yes.

Q: Do you know also the deceased, Inocentes Tan?

A: Yes.

Q: Why do you know him also?

A: He is also a co-worker at El Marino.

Q: On May 18, 1989 at about 2:00 o'clock dawn, where were you?

A: In the El Marino.

Q:

At about 2:30, what did you do?

A: I gather the empty bottles.

Q: What time did you go out from El Marino?

A: Around that time at 2:30.

Q: When you get out who were your companions?

A: The victim, the one who died.

Q: Who else?

A: Sonny Boy Rosello.

Q: Why did you go out, the three of you?

A: At that time, sir, we went out because there were groups of persons who harrassed us and we went out because we were afraid.

Q: Do you know who were the group?

A: Yes, the group of Elmer Heredia.

Q: When you three went out of El Marino, what happened?

A: When we went out of El Marino someone threw us a bottle and because of fright we ran away.

Q: You speak of 'we ran away'. Who were your companions?

A: The three of us, Inocentes Tan and Sonny Boy Rosello.

Q: You said you were thrown by a bottle?

A: Yes.

Q: Did you know who threw the bottle to you?

A: Their group. (Witness pointing to the left side of the courtroom where some men are seated.)

Q: The group of Heredia?

A: Yes.

Q: Then, what happened after that when you were thrown by a bottle?

A: We ran away.

Q: And then, what happened next?

A:

And while running away, sir, I noticed that the deceased, Inocentes Tan, was a little behind me and I also saw the group of Heredia pursuing us and it happened that I turned to look and I saw that it was Lynson Chua who was holding the hair and I saw actually Bulljack delivering a stabbing blow like that. (Witness demonstrating with his right hand by raising it to the level of his head and delivering a blow downward.)

Q: You said it was Elmer Heredia, the accused, who continuously stabbed Inocentes Tan. What did you do?

A: When we saw that Inocentes Tan was already lying on his back and Heredia was squatting over him and stabbing, we immediately ran to the police station to report.

Q: Who was your companion in going to the police station?

A: Sonny Boy Rosello.

Q: In effect, were you able to report the stabbing?

A: Yes.

Q: What did the police do?

A:

I accompanied the police back to El Marino, sir and upon arriving there, we saw that Inocentes Tan was already lying down and we notice that there was still life in him. So, we tried to bring him to Cortes Hospital but he died before arriving.

Q: You said it was accused Elmer Heredia who actually stabbed the deceased Inocentes Tan. Can you point to this Elmer Heredia if he is here in the courtroom?

A: Yes.

Q: Point to him.

A: There. (Witness pointing to a person who identified himself as Elmer "Bulljack" Heredia.)

Q: You said that Inocentes Tan died before you arrived at Cortes Hospital. What did you next?

A:

What I did because I saw that he was already dead, sir, I immediately sent hurriedly Sonny Boy Rosello to our place at Ramos, D. Jakosalem to inform the family of the deceased."[10]

The fact that Saplal did not name the accused-appellant as one of the perpetrators of the murder despite their being co-workers did not discredit his identification of the accused-appellant. We adopt with approval the findings of the Court of Appeals on this point:

"As revealed during cross-examination of prosecution's eye-witness Saplal, from the date of his (Saplal's) employment up to the date of the incident, he (Saplal) was only there for three days yet (TSN, Feb. 14, 1990, p. 9). It is therefore possible and/or believable that, though the witness and the accused-appellant are co-workers, the former may not actually know the name of the latter. Witness Saplal categorically identified, recognized and remembered accused-appellants face as the assailant although he knows assailant, his co-worker, only as Boll Jack. Even accused-appellant himself testified that he does not know witness Saplal (despite the fact that they were supposed to be co-workers). (TSN, Oct. 18, 1990, p. 4)."[11]

At any rate, one need not identify the assailant by name, what is important is that he is positive as to the physical identification of the accused.[12]

The testimony of PNP Medico Legal Officer Jesus P. Cerna corroborates Saplal's assertion that the victim was stabbed to death:

"FISCAL FLORES TO DR. JESUS P. CERNA

Q: Dr. Cerna, can you tell this Honorable Court how many wounds did the deceased Inocentes Tan sustained?

A: He sustained four (4) stab wounds, sir.

Q:

Can you point to this Honorable Court in your diagram the four (4) stab wounds?

A:

Two (2) of the stab wounds were located on the chest right side one below each other (witness indicating upper chest right side). The other stab wound was located on the left thoracic region (indicating left aliac wrist) and the other stab wound was located on the left leg (indicating the left leg).

FISCAL FLORES:

I would like to request that these four (4) stab wounds in the diagram found in Exhibit 'C' be marked as Exhibit 'C-2', Your Honor.

COURT:

Mark it.

FISCAL FLORES:

Q: Which of these wounds is fatal and causes death?

A: The two (2) stab wounds on the right chest and the one stab wound at the left thoracic abdominal region were the fatal wounds, sir.

FISCAL FLORES:

That is all with the witness, Your Honor.

COURT:

Cross?

ATTY. SENO:

May I please the Honorable Court.

COURT:

Proceed.

CROSS EXAMINATION BY ATTY. SENO:

Q: Dr. Cerna, I noticed in your findings that the wounds were directed backward and then upward. Can you explain that findings to us?

A:

When I opened up the body of the deceased and examined the direction of the stab wounds, I found out that they were directed backward, meaning to say towards the back from the front then upward and towards the center of the body.

Q:

Considering the direction of the stab wounds, can you give us a hypothetical position of the two (2) persons, the victim and the assailant considering the position of the wounds inflicted in the body of the victim? Would they be standing opposite each other or one is lying flat on the ground and the other is on top of the other.

A:

These two (2) stab wounds on the right side of the chest and this one stab wound on the left thoracic abdominal region could be inflicted while the assailant and the victim were facing each other and the assailant making an upward thrust.

Q: If both the victim and the assailant were facing each other?

A: Yes, sir.

Q:

It could not be inflicted if the victim and the assailant were standing facing each other and the assailant is holding the knife in this manner (counsel demonstrating that the blade of the knife is protruding from his hand away from the thumb)?

A: If the assailant holds the knife or wounding weapon in this manner most likely the thrust will be downward.

Q: Supposing, Dr., the victim is lying down and the assailant is on top of him, would would this kind of would have been possibly inflicted with the assailant holding the same knife in this position also?

A: If the victim was lying on his back and the assailant was over the victim, it is unlikely that the thrust will be going upward.

Q:

With this kind of position in which the knife is held in this manner?

A: Yes.

Q:

The only possible position the assailant would have assumed is to hold the knife in this manner (counsel demonstrating that the blade of the victim is protruding along the thumb) and the victim is lying flat on his back?

A: Yes.

Q: The victim also suffered one stab wound on the back?

A:

No. There was no stab wound on the back."^[13]

We are not persuaded by accused-appellant's attempts to impeach the credibility of Saplal by the assertion that Dr. Cerna's statement that the direction of the wounds were directed backwards and then upward contradicts the testimony of Saplal that the accused-appellant stabbed the victim with a downward blow. Assuming that Saplal did not accurately portray the manner by which the accused-appellant delivered the stabbing blows, there is no doubt at all in his statement before the court that he saw the accused-appellant stabbing the victim while the latter was lying on his back. Errorless testimonies cannot be expected especially when a witness is recounting details of a harrowing experience and as long as the mass of testimony jibes on material points, the slight clashing statements dilute neither the witnesses credibility nor the veracity of their testimony.^[14] The positive testimony of the eyewitness, Saplal, has greater probative value than the hypothetical statements made by a witness who was not even present at the locus criminis^[15] like Dr. Cerna when the trial court had the full opportunity to evaluate the credibility of the eyewitness Saplal who demonstrated in court the manner in which the downward blows with a knife were inflicted, as well as that of the medical officer who testified as to the hypothetical positions of the assailant vis a vis the victim's and the possible position of the knife in the hands of the former. It is within the trial court's discretion to accept such portions of the testimony of a witness as it may deem credible and reject those which it believes false^[16] for it is in the best position to determine facts and to assess the credibility of witnesses as it is in a unique position to observe the witnesses' deportment while testifying which opportunity the appellate court is denied on appeal; unless the trial court has failed to appreciate certain facts and circumstances which would materially affect the result of the case^[17], this Court will respect the findings and conclusions of the trial court provided that they are supported by substantial evidence on record.^[18] We find no cogent reason to disturb the trial court's appreciation of the evidence and find no basis in the record to rule that Saplal's testimony was not credible.

Accused-appellant also raises the defense of denial.

The denial of accused-appellant cannot prevail over the positive assertions of the prosecution witnesses that he participated in the commission of the crime. Like the defense of alibi, a denial is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that the accused-appellant was at the scene of the incident and was one of the victim's assailants and perpetrators of the

crime.[19]

It is very clear from a reading of the decisions of both the trial court and of the Court of Appeals that reliance was made principally on the testimony of Saplad. Nowhere is there a reference to the supposed extrajudicial confessions made by the co-accused that would support the claim of the accused-appellant that said confessions were adverted to in supporting a judgment of conviction.

The killing was qualified by taking advantage of superior strength[20]. This circumstance is present not only when the offenders enjoy numerical superiority, or when there is a notorious inequality of forces between the victim and the aggressors, but also when the offenders use powerful weapons out of proportion to the defenses available to the offended party.[21] In the present case, the victim was not armed when he was assaulted by the three accused and he was rendered helpless by Chua and Rubio who held his hands and hair while he was being stabbed by the accused-appellant.

At the time the crime was committed, murder was punishable by reclusion temporal in its maximum period to death.[22] In the absence of any mitigating or aggravating circumstance, the penalty should be imposed in its medium period which is reclusion perpetua.[23] We also order the accused-appellant to pay the heirs of Innocentes Tan the amount of P50,000.00 as death indemnity as this is in accord with prevailing jurisprudence.[24]

WHEREFORE, the appealed decision of the Regional Trial Court is hereby **AFFIRMED**. The accused-appellant, ELMER HEREDIA also known as BOLL JACK is found **GUILTY OF MURDER** and is sentenced to **RECLUSION PERPETUA**. Accused-appellant is further ordered to pay the heirs of the victim P50,000.00 as death indemnity.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] § 13 - "xxx Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of reclusion perpetua or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review."

[2] Special Ninth Division composed of the ponente, J. Asaali S. Isnani (Chairman); and the members, J. Fermin A. Martin, Jr. and J. Ricardo P. Galvez, concurring.

[3] Penned by Judge Mercedes Gozo-Dadole.

[4] Record, Folder 2, p. 1.

[5] Ibid., at p. 9.

[6] Record, Folder 1, p. 66.

[7] Appellant's Brief, p. 5.

[8] Ibid., pp.5-15.

[9] Appellee's Brief, pp. 5-9.

[10] T.S.N., February 14, 1990, pp. 3-7.

- [11] Record, Folder 1, p. 68.
- [12] *People vs. Marcos*, G.R. No. 128892, June 21, 1999 at p. 22.
- [13] T.S.N., July 5, 1990, pp. 6-9.
- [14] *Antonio vs. Court of Appeals*, 273 SCRA 328 at p. 342 [1997].
- [15] *Ibid.*, p. 343.
- [16] *People vs. Turingan*, 282 SCRA 424 at p. 443 [1997].
- [17] *People vs. Batidor*, G.R. No. 126027, February 18, 1999 at p. 10.
- [18] *People vs. Mahinay*, G.R. No. 122485, February 1, 1999 at p. 16; *People vs. Banela*, G.R. No. 124973, January 18, 1999 at p. 5.
- [19] *People vs. Baniel*, 275 SCRA 472 at pp. 483-484 [1997].
- [20] Revised Penal Code, Article 14, par. 15 -
"That advantage be taken of superior strength, or means employed to weaken the defense."
- [21] *People vs. Siccuan*, 271 SCRA 168 at p. 174 [1997].
- [22] "Art. 248. Murder - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances.
1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity."
- [23] *People vs. Daniel*, 236 SCRA 499 at p. 505 [1994]; Article 64 (1), Revised Penal Code.
- [24] *People vs. Verde*, G.R. No. 119077, February 10, 1999 at p. 17.

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