PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRESENCIANO MARAMARA ALIAS "CRESING," ACCUSED-APPELLANT.

G.R. No. 110994. October 22, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Masbate, Masbate, Branch 44, convicting accused-appellant Cresenciano Maramara of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim's heirs the amount of P10,000.00 as medical and funeral expenses and P50,000.00 as moral damages.

On January 23, 1992, 4th Assistant Provincial Prosecutor Romeo C. Sampaga filed with the Regional Trial Court an information[2] for murder against accused-appellant, alleging:

> "That on November 18, 1991, in the evening thereof, at Barangay Calpi, Municipality of Claveria, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, evident premeditation, treachery and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with a handgun one Miguelito Donato, hitting the latter on the chest, thereby inflicting wound which caused his death."

At his arraignment on March 25, 1992,[3] accused-appellant pleaded not guilty to the crime charged. Trial commenced thereafter.

The prosecution's version of the killing of Miguelito Donato, as culled from the testimonies of his younger brother Ricardo Donato[4] and father Regarder Donato,[5] is as follows:

A benefit dance sponsored by the Calpi Elementary School Parents-Teachers Association of which accused-appellant is the president, was held in the yard of accused-appellant's house in Barangay Calpi, Claveria, Masbate in the evening of November 18, 1991. At about 12 midnight, while Ricardo Donato was dancing with a certain Rowena del Rosario, one Dante Arce, a friend of accused-appellant, approached Ricardo Donato and boxed him on the chest. Frightened, Rowena ran away while Ricardo Donato scampered toward the fence for safety. Miguelito Donato was about two (2) meters away from where Ricardo Donato stayed at the fence. Not for long, accused-appellant took his handgun tucked in his waist and fired at victim Miguelito Donato, hitting the latter on the left breast. Ricardo Donato tried to help his fallen brother Miguelito but somebody struck Ricardo's head with an iron bar which knocked him out for about three (3) minutes. When Ricardo regained consciousness, he hurried home and informed his parents of what happened to their son Miguelito.

Regarder Donato, Miguelito's father, immediately went to the crime scene and rushed Miguelito to the Pio Duran Hospital where the latter died early in the morning of the next day (November 19, 1991). Before Miguelito expired, Regarder Donato asked who shot him and Miguelito replied that it was accused-appellant.[6]

Dr. Nora L. Presbitero conducted a post-mortem examination of Miguelito's cadaver and his autopsy and his autopsy report[7] revealed that aside from a gunshot wound, Miguelito's body bore a 4 cm. lacerated wound at the left temporal area, a 4 cm. incised wound at the left parietal area and a 5.5 cm. incised wound at the right iliac area. Dr. Presbitero[8] explained that the three (3) wounds were caused by blunt and sharp instruments and considered the possibility that all four (4) wounds could have been inflicted by more than two (2) persons. She also testified that accused-appellant was formerly her patient whom she diagnosed as suffering from empyema.

The defense had a different story.[9] At about 11:00 in the evening, brothers Ricardo and Miguelito Donato arrived at the benefit dance and approached the dancing pair of Rowena del Rosario and Dante Arce. Then Ricardo and Miguelito ganged-up on Dante Arce. Accused-appellant, who was about eight (8) meters away, rushed to the scene to pacify the trio. Ricardo held accused-appellant's hands at his back and then Miguelito repeatedly stabbed accused-appellant on different parts of his body. Accused-appellant regained consciousness at the Claveria hospital where Dr. Gil Geñorga treated him for a few days, then transferred him to the Pio Duran Hospital. There was no way accused-appellant could have resisted Miguelito's attack, much less was he capable of inflicting injury on Miguelito, since the stronger Ricardo was holding accused-appellant's hands and was dragging him away while Miguelito kept lunging a six-inch bladed weapon at him.

Dr. Gil Geñorga testified[10] that he attended to accused-appellant at the Claveria Hospital in the early morning of November 19, 1991. Accused-appellant suffered four (4) penetrating stab wounds on different parts of his body--two on the stomach, one on the left nipple and one on the left arm. Dr. Geñorga had to open accused-appellant's abdomen (exploratory laparatomy) to determine what internal organs were affected. Although he was accused-appellant's attending physician, Dr. Geñorga never asked the details of the stabbing incident nor the identity of assailant, as he was purely concerned with the treatment of accused-appellant's injuries.

On the basis of the prosecution's reconstruction of the events that transpired on that tragic night of November 18, 1991, on May 27, 1993, the trial court rendered a guilty verdict, the dispositive portion of which reads:

> "WHEREFORE, finding the accused Cresenciano Maramara guilty beyond reasonable doubt of the crime of Murder and without any mitigating circumstances and the existence of treachery in using a firearm in taking the life of Miguelito Donato, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA to be served at the National Penitentiary. He is further ordered to pay and/or reimburse the family of the victim the amount of P10,000.00 as medical expenses and maintenance during the wake; and the amount of P50,000.00 as moral damages and to pay the cost of the suit.
>
> IT IS SO ORDERED."

Hence, this appeal.

Before us, accused-appellant challenges the findings of the trial court in the hope of securing an acquittal or, at the least, being held liable only for the death of Miguelito Donato in a tumultuous affray as defined under Article 251 of the Revised Penal Code.

We cannot accept any of accused-appellant's submissions.

In the main, accused-appellant would assail the credibility of prosecution witnesses Ricardo and Regarder Donato whose testimonies formed the principal basis for his conviction. The conflicting claims of the prosecution and the defense on how Miguelito Donato died is an issue that ultimately and unavoidably goes into the question of whom to believe among the witnesses. The issue of credibility requires a determination that is concededly best left to the trial court with its unique position of having been enabled to observe that elusive and incommunicable evidence

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of the deportment of witnesses on the stand.[11] In the absence of any showing that the trial court's calibration of credibility is flawed, this Court is bound by its assessment.[12]

Guided by these long standing doctrinal pronouncements, we find no reason to disturb the trial court's assessment of (1) Ricardo Donato's eyewitness account of how accused-appellant shot Miguelito Donato and (2) Regarder Donato's recollection of his son Miguelito's dying declaration, as truthful testimonies coming from credible witnesses. The fact of relationship of prosecution witnesses Ricardo and Regarder Donato to the victim Miguelito Donato does not necessarily place them in bad light. Relationship per se does not give rise to a presumption of bias or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of a witness.[13] While revenge is a normal reaction in a person who has lost a loved one because of a crime, it does not follow that the revenge would be directed aimlessly so as to include innocent persons.[14] In fact, family members who have witnessed the killing of a dear one usually strive to remember the face of the assailant.[15] Such relatives are naturally interested in implicating only the real culprit, for otherwise, the latter would thereby gain immunity.[16] Thus, where there is no evidence and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[17] We have further ruled that there is absolutely nothing in this jurisdiction which disqualifies a person from testifying in a criminal case in which a relative is invoked, if the former was really at the scene of the crime and witnessed the execution of the criminal act.[18]

Regarder Donato's testimony regarding Miguelito's identification of the accused-appellant as his assailant certainly qualifies as a dying declaration that is worthy of credence. For a dying declaration to be admissible in evidence, these requisites must concur: (1) that death is imminent and the declarant is conscious of that fact; (2) that the declaration refers to the cause and surrounding circumstances of such death; (3) that the declaration relates to facts which the victim is competent to testify to; (4) that the declarant thereafter dies; and (5) that the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.[19] The degree and seriousness of the wounds suffered by the victim Miguelito Donato and the fact that his death supervened shortly thereafter may be considered as substantial evidence that the declaration was made by him with the full realization that he was in a dying condition.[20] The victim Miguelito Donato's dying declaration having satisfied all these requisites, it must be considered as an evidence of the highest order because, at the threshold of death, all thoughts of fabrication are stilled. A victim's utterance after sustaining a mortal wound may be considered pure emanations of the incident.[21]

There is no merit in accused-appellant's position that he should be held liable only for death caused in a tumultuous affray under Article 251 of the Revised Penal Code. It was in such situation that accused came at the scene and joined the fray purportedly to pacify the protagonists when Miguelito attacked him causing four (4) stab wounds in different parts of his body—two on the stomach, one on the left nipple, and one on the left arm. Then accused-appellant with his handgun shot Miguelito.

Assuming that a rumble or a free-for-all fight occurred at the benefit dance, Article 251 of the Revised Penal Code cannot apply because prosecution witnesses Ricardo and Regarder Donato positively identified accused-appellant as Miguelito Donato's killer.[22]

While accused-appellant himself suffered multiple stab wounds which, at first blush, may lend verity to his claim that a rumble ensued and that victim Miguelito inflicted upon him these wounds, the evidence is inadequate to consider them as a mitigating circumstance because the defense's version stands discredited in light of the more credible version of the prosecution as to the circumstances surrounding Miguelito's death.

We do not subscribe, however, to the trial court's appreciation of treachery which, we note, was discussed only in

the dispositive portion of the decision and which was based solely on the fact that appellant used a firearm in killing the victim Miguelito Donato. The use of a firearm is not sufficient indication of treachery. In the absence of any convincing proof that accused-appellant consciously and deliberately adopted the means by which he committed the crime in order to ensure its execution, the Court must resolve the doubt in favor of accused-appellant.[23] And where treachery is not adequately proved, the accused-appellant can be convicted only of homicide.[24]

As accused-appellant is liable for homicide, it is the penalty for homicide that shall be imposed. The penalty prescribed for homicide is reclusion temporal.[25] There was attendant neither mitigating nor aggravating circumstance so that the prescribed penalty of reclusion temporal shall be imposed in its medium period.[26] Applying the Indeterminate Sentence Law, accused-appellant may be sentenced to an indeterminate penalty within the range of the penalty next lower in degree to that prescribed for the offense, that is, prision mayor, as the minimum, and within the range of reclusion temporal in its medium period, as the maximum.[27]

As to the damages awarded, the trial court erred in awarding moral damages in lieu of civil indemnity. Moral damages may not be awarded if there is no legal basis therefor.[28] Nor it may be imposed in substitution of civil indemnity. “The two awards—one for actual damages and the other for moral damages—cannot be dealt with in the aggregate; neither being kindred terms nor governed by a coincident set of rules, each must be separately identified and independently justified.”[29] Consequently, the amount of P50,000.00 awarded by the trial court as moral damages must be considered as civil indemnity.[30]

WHEREFORE, the Court hereby MODIFIES the judgment appealed from. The Court finds accused-appellant Cresenciano Maramara guilty beyond reasonable of homicide, defined and penalized under Article 249 of the Revised Penal Code, for the killing of Miguelito Donato without the attendance of any modifying circumstance. Accordingly, the Court hereby SENTENCES accused-appellant Cresenciano Maramara to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years, and four (4) months of reclusion temporal, as maximum, with all its accessory penalties, and to pay the heirs of Miguelito Donato in the amount of P10,000.00 as actual damages and P50,000.00 as death indemnity.

Costs against the accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Puno, J., concur.

Kapunan, and Ynares-Santiago, JJ., on official business abroad.

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[1] In Criminal Case No. 6562, Judge Manuel C. Genova, presiding, Rollo, pp. 12-18.

[2] Rollo, p. 4.

[3] Records, p. 31.

[4] TSN, May 19, 1999, pp. 1-18.

[5] TSN, May 19, 1999, pp. 18-27.

[6] TSN, May 19, 1992, supra, on pages 18-27.

[7] Records, p. 31.

[8] 8 TSN, October 29, 1992, pp. 1-15.

[9] TSN, April 5, 1993, pp. 1-20; TSN, January 26, 1993, pp. 1-14.

[10] TSN, March 10, 1993, pp. 1-8.

[11] People vs. Ferrer, 295 SCRA 190 [1998]; People vs. delos Santos, 295 SCRA 583[1998] ; People vs. Quitlong, 292 SCRA 360 [1998] ; People Cabaluna, 264 SCRA 596 [1996] .

[12] People vs. Victor, 292 SCRA 186 1998]; People vs. Lacatan, 295 SCRA 203 [1998].

[13] People vs. Enciso, 225 SCRA 361 1993] .

[14] People vs. Mendoza, 292 SCRA 168[1998] ; People vs. Lardizabal, 204 SCRA 320 [1991]; People vs. Sarabia, 127 SCRA 101 [1984] .

[15] People vs. Ramos, 260 SCRA 402[1996].

[16] People vs. Narajos, 149 SCRA 101[1987]; People vs. Radones, 141 SCRA 548[1986].

[17] People vs. Crisostomo, 293 SCRA 65[1998]; People vs. Tabaco, 270 SCRA 32[1997] .

[18] People vs. Galapin, 293 SCRA 474[1998] ; People vs. dela Cruz, 207 SCRA 632 [1992] .

[19] People vs. Umadhay, 293 SCRA 545[1998]; People vs. Padao, 267 SCRA 64 [1997].

[20] People vs. Apa-ap, 235 SCRA 468 [1994] ; People vs. Obngayan, 55 SCRA 465 [1974]; People vs. Brioso, 37 SCRA 336 [1971] .

[21] People vs. Umadhay, supra; People vs. Montilla, 211 SCRA 119[1992] .

[22] Luis B. Reyes, The Revised Penal Code, Book Two, 1993 Edition, p. 436.

[23] People vs. Aguilar, 292 SCRA 349[1998].

[24] People vs. Real, G.R. No. 121930, June 4, 1999, citing People vs. Beltran, 260 SCRA 141 [1996] ; People vs. Manlulu, 231 SCRA 701[1994].

[25] Article 249, Revised Penal Code.

[26] Article 64 (1), Revised Penal Code; People vs. Tadeje, G. R. No. 123143, July 19, 1999; People vs. Tavas, G. R. No. 123969, February 11, 1999; People vs. Realin, G. R. No. 126051, January 21, 1999.

[27] People vs. Silvestre, G. R. No. 127573, May 12, 1999; People vs. Tadeje, supra; People vs. Tavas, supra.

[28] People vs. Sequiño, 264 SCRA 79[1996].

[29] Del Mundo vs. Court of Appeals, 240 SCRA 348, 356 [1995].

[30] Cf. People vs. Gementiza, 285 SCRA 476, 491[1998].

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