

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO BAUTISTA, ARMAN HERNANDEZ, ARNOLD MENDOZA & JESS SABARIN (AT LARGE), DEFENDANTS-APPELLANTS.

G.R. No. 111149. September 05, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Accused-appellant Renato Bautista, together with three (3) other co-accused namely, Arman Hernandez, Arnold Mendoza, and Jess Sabarin, were charged with the crime of MURDER before Branch V of the Regional Trial Court of Manila, National Capital Judicial Region, under an Information, dated February 28, 1990, which reads:

The undersigned accuses RENATO BAUTISTA, ARMAN HERNANDEZ, ARNOLD MENDOZA and JESS SABARIN of the crime of murder, committed as follows:

That on or about December 14, 1989, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with abuse of their superior strength, attack, assault and use personal violence upon RODEL YARZA Y LOPEZ, by then and there mauling and stabbing him with a bladed weapon, hitting him on the left side of his body, thereby inflicting upon the said RODEL YARZA Y LOPEZ mortal stab wound which was the direct and immediate cause of his death.

Contrary to law.

FELY CELESTIO E. TABANGAY

Asst. City Prosecutor”[1]

The aforesaid case was docketed as Criminal Case No. 90-82463. On March 26, 1990, the trial court issued warrants of arrest against the four (4) accused. Herein accused-appellant Renato Bautista was arrested at his parents’ home located at 1337 Sevilla Street Tondo, Manila, while his three (3) co-accused remained at large.

Upon arraignment, accused-appellant pleaded “Not Guilty” to the charge. Thereafter, trial ensued against accused-appellant alone.

On June 1, 1993, the trial court rendered a judgment of conviction, the dispositive portion of which states:

WHEREFORE, judgment is rendered finding the accused Renato Bautista guilty beyond reasonable doubt of the crime murder, and hereby sentences him to serve the penalty of RECLUSION PERPETUA, accessory penalties provided by law, and to indemnify the heirs of the victim in the amount of Fifty Thousand (P50,000.00) Pesos and to pay the costs.

Let warrant of arrest be issued against accused Arman Hernandez, Arnold Mendoza and Jess Sabarin .

Atty. Viterbo Tagarda is awarded an honorarium of Six Hundred (P600.00) Pesos as attorney’s fees subject to

the availability of funds.

SO ORDERED.

Manila, June 1, 1993.”[2]

The aggravating circumstance of abuse of superior strength was considered by the trial court against accused-appellant to qualify the killing to murder. The court a quo also ruled that the killing was attended by the generic aggravating circumstance of evident premeditation (not alleged in the Information), but found that the same was offset by the mitigating circumstance of provocation.

Maintaining his innocence, accused-appellant filed an appeal before this Court.

The People’s version of how the killing occurs differs somewhat from that of the appellant’s. Here is the people’s version.

On December 14, 1989, at around 8:30 in the evening, Rodel Yarza arrived at his home located at 1325 Abad Santos Street Tondo, Manila, from Divisoria, where he had been selling pants, t-shirts and bags. After dinner, he told his wife, Zenaida, that he would play a game of cards, locally called “pusoy,” somewhere in their neighborhood.

At about 9:00 o’clock that evening, his wife went out of their house to fetch her husband. She saw him playing cards with accused Arman Hernandez, Jess Sabarin, Arnold Mendoza and appellant Renato Bautista. When Rodel Yarza saw her, he told his wife to go home ahead and that he would soon follow.

Shortly after she reached home, Zenaida’s brother, Alex Tablizo, informed her that her husband was seriously stabbed and that he was brought to the Mary Johnston Hospital.

Zenaida left immediately for the hospital where she saw her husband lying down, “profusely perspiring, pale and very weak.”[3]

She went beside her husband and noticed a stab wound on the lower part of his armpit. She asked him who it was who stabbed him. Rodel replied, “Nette, my playmates and the one who stabbed me was Rene.”[4] “Nette, he was the son of Efren Baculaw, the short-changer in Divisoria.”[5]

About 10 to 15 minutes prior to Zenaida’s arrival at the hospital, Efren Bautista, the father of appellant, and his wife, Teresita, were already there obviously waiting for Zenaida. Efren Bautista assured Zenaida that they will help defray part of the hospital expenses. And, in the course of his conversation with Zenaida, Efren Bautista said that, before the stabbing incident, he saw appellant enter their house, get a knife and then leave immediately. His son’s unusual behavior moved Efren to follow him.

Because Zenaida could not afford the fees at Mary Johnston Hospital, she was forced to transfer her husband to the Jose Reyes Memorial Hospital at Avenida Rizal Tondo, Manila. At about 11:00 o’clock that evening, Rodel was rushed to the emergency room of the Jose Reyes Memorial Hospital where he was operated on. At around 2:30 o’clock down , the following day, Rodel expired.

Accused-appellant Renato Bautista unraveled a different story:

At approximately 8:00 o’clock in the evening of December 14, 1989, herein accused-appellant Renato Bautista was playing cards with his friends along Abad Santos Street Tondo, Manila. During the game, the deceased Rodel Yarza, for no apparent reason, hit accused-appellant with a bottle on the left side of the head. Immediately after being hit by the victim, Renato Bautista, instead of retaliating, went home to his parents’ house at Sevilla Street Tondo, Manila, in order to report the incident to his father. On the way home. However, accused-appellant saw

his co-accused Arman Hernandez, Arnold Mendoza and Jess Sabarin, drinking in an alley. He told the three (3) co-accused that the victim, Rodel Yarza, hit him on the head with a bottle. Upon hearing this, Hernandez, Mendoza and Sabarin immediately proceeded to the place where the aforesaid incident took place, while herein accuse-appellant went on his way home. Upon reaching his parents' house, accused-appellant found out that only his mother, Teresita Bautista, was there. He waited for his father for nearly thirty (30) minutes. Not meeting his father, he went back to Abad Santos Street, where the victim Rodel Yarza had hit him on the head with a bottle, followed closely by his mother, Teresita Bautista.

When accuse-appellant and Teresita Bautista reached the aforesaid place, there was already a scuffle going on between the victim, Rodel Yarza, on the one hand, and Arman Hernandez, Arnold Mendoza and Jess Sabarin, on the other. The defense maintains that Teresita Bautista was able to hold herein accused-appellant, successfully preventing him from joining Hernandez, Mendoza and Sabarin in assaulting Yarza.

We sustain the conviction of accused-appellant.

Direct evidence abound against accused-appellant. Take the following eyewitness testimony of Charlie Yarza, witness for the prosecution:

Q: Mr. Witness, on or before or about December 14, 1989 about 9:00 p.m., could you still remember where you were?

A: Yes, sir.

Q: Tell the Honorable Court where were you on such time and date?

A: I was at the corner of Abad Santos Street and Cristobal.

Q: Where is that located?

A: Manila, sir.

Q: Would you kindly tell the court what were you doing there at that time and date at the corner of Abad Santos?

A: No, sir. I was just standing.

Q: When you were there standing, could you still recall what unusual incident that happened?

A: Yes, sir.

Q: What was that unusual incident?

A: Somebody was chasing my cousin, sir,

Q: Could you remember who are those chasing your cousin?

A: Rene Bautista, Arnold Mendoza, Ricky Sabarin.and Arman Hernandez.

Q: While those persons you mentioned were chasing your cousin, what else, if any happened?

A: Those four were chasing my cousin, mauled him and even removed his eyeglasses. My cousin was running when being chased by these four persons.

Q: Who is this cousin of yours?

A: Rodel Yarza, sir.

Q: After that, what happened, if any, Mr. Witness?

A: I saw him stabbed my cousin at Moriones Street.

Q: Who is that who stabbed him?

A: Rene Bautista, sir.

Q: What about the other three accused, what did they do, if any? More particularly Arman Hernandez?

A: He is helping him, sir.

Q: What was he doing?

A: He was helping his three companions, sir.

Q: Would you tell the court what specifically this Arman Hernandez doing?

A: They were chasing Rodel Yarza, sir, and killed him.

Q: About this Arnold Mendoza, what particular thing did he do?

A: He was also chasing Rodel Yarza, sir.

xxx xxx xxx

Q: What about Ricky Sabarin that (sic) you mentioned?

A: He was the one who hit Rodel Yarza, sir. He used a dust pan.

xxx xxx xxx..”[6]

More importantly, the victim, Rodel Yarza, made a dying declaration before life was finally snuffed out of him. Zenaida Yarza, wife of the victim, testified in open court as to what her husband told her when asked who was responsible for the stabbing:

xxx xxx xxx

Q: What did you do after hearing that your husband was stabbed?

A: I went immediately to the hospital, ma’am.

Q: What time was that when you went, rather, when you were informed by your brother that your husband was at the Mary Johnston Hospital?

A: Between 9:30 to 10:00 p.m., ma’am.

Q: You said you immediately went to the hospital, what hospital did you go?

A: Mary Johnston Hospital, ma’am.

Q: Did you find your husband there?

A: Yes, sir.

Q: What is he doing when you saw your husband?

A: He was pale and in bed perspiring, sir.

Q: What department of the hospital?

A: Emergency room, sir.

Q: What is his condition?

A: He was profusely perspiring and very weak.

Q: Were you able to talk to your husband when you arrived in his bedside?

A: Yes, sir.

Q: What did you say to your husband?

A: I asked him, who did that to him, ma’am. I wanted to know from him who was(sic) his enemies and who stabbed him.

Q: Did you notice any stab wound?

A: Yes, sir.

Q: Where was his stab wound?

A: On his body lower part of his armpit because at the time because(sic) his shirt was removed.

xxx xxx xxx

Q: When you asked that question to your husband, you(sic) who did that to him, what happened after that?

A: He said, Nette, my playmates and the one who stabbed me was Rene.

Q: What else did your husband tell you?

A: He told me, 'Nette, he was the son of Efren Baculaw, the short changer in Divisoria.'

Q: Aside from this Rene whom you mentioned stabbed him, did he mention the name of his playmates?

A: Yes, sir.

Q: What names did he mention to you by your husband(sic)?

A: Arnold Mendoza, Ricky Sabarin, Arman Hernandez.

xxx xxx xxx.”[7]

This, we consider to be a dying declaration. The general rule is that “[A] witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception xxx.”[8] Any other testimonial evidence outside the witness’ personal knowledge is hearsay and downright inadmissible. In fact, hearsay evidence, even if not objected to during trial and thus admitted, should carry no probative value whatsoever.[9] Nevertheless, the Rules and jurisprudence provide certain well- recognized exceptions to the hearsay rule among which is a dying declaration found under Section 37, Rule 130:

“Dying declaration--- The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.”

There are two (2) obvious reasons for the admissibility of a dying declaration: (a) necessity and (b) trustworthiness. Necessity, because the declarant’s death renders impossible his taking the witness stand. And trustworthiness, since the declaration is “made in extremity, when the party is at the point of death and every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth. A situation so solemn and awful is considered by the law as creating an obligation equal to that which is imposed by an oath administered in court,”[10] There are four (4) requirements for the admissibility of a dying declaration, to wit:

[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; and

[4] That the declaration is offered in a case wherein the declarant’s death is the subject of inquiry.”[11]

Accused-appellant maintains that the testimony of Zenaida Yarza to the effect that the victim told her that it was accused-appellant who stabbed him should not be admitted as a dying declaration simply because it was not made “under a consciousness of impending death,” which is the most important and decisive requisite for a statement to qualify as a dying declaration.

We do not agree. While it is true that the victim, Rodel Yarza, did not explicitly mention that he knows or feels that he is about to die, this does not negative the fact that the victim, who was already pale, weak from a fatal wound, and perspiring profusely, was conscious of his impending death at the time he declared to his wife who attacked and stabbed him. He in fact died a few hours thereafter. The law does not require that the declarant

explicitly state his perception[12] that he has given up the hope of life.[13] It is enough if, from the circumstances, it can be inferred with certainty that such must have been his state of mind.[14] Judged by the nature and extent of his wounds, there can be no other conclusion than that the victim must have realized the seriousness of his condition. Thus, it can safely be inferred that he made the declaration under the consciousness of impending death.

Dr. Marcial G. Ceñido, the Medico-Legal Officer who conducted the necropsy examination upon the deceased, testified as to the degree and seriousness of the stab wound suffered by the victim, viz.:

“xxx xxx xxx

Q: I will now call your attention Dr. to your post mortem finding in the first paragraph thereof, external injuries and on no. 1 penetrating stab wound 45.5 inches measuring--- 1.5 centimeter by 10.5 centimeters in depth direct obliquely forward and downwards, etc., please tell the court where is this penetrating stab wound?

A: It is at the back, sir.

xxx xxx xxx

Q: What do you mean by this penetrating wound?

A: This pass(sic) thru the cavity of the left thorax cavity.

Q: You said, you were the depth is (sic) measuring 1.5 cm.. by 10.5 cm. in depth, please demonstrate to the court the exact or the extent of the depth of this penetrating stab wound?

A: 10.5 cm. to 3.69.

xxx xxx xxx

Q: Because the depth has penetrating stab wound more or less 4 inches from the back of the scapular, what internal organs were penetrated?

A: Lower lobe of the left lung, sir.

Q: What was the effect if any of this stab penetrating wound 4 inches in depth, that penetrated to the lower lobe of the left lung?

A: Hemorrhage and shock caused his death, sir.

Q: You said there was a penetrating wound, what kind of a weapon could have cause this kind of stab wound?

A: Pointed bladed weapon.

Q: Like a knife?

A: Like a bolo, sir.

Q: Would you consider this wound a mortal wound?

A: Yes, sir.

Q: Could it have been(sic) caused by(sic) instantaneous death?

A: Immediate, sir.

xxx xxx xxx.”[15]

Perforce, the stab wound, located at a sensitive part of his body, which punctured a vital organ (the lower lobe of the left lung), coupled with the abrasions he suffered at the middle right arm and at the bend of the right elbow,[16] are sufficient to have made Rodel Yarza realize that he will not survive. This ante mortem statement by the victim is entitled to highest credence for scarcely would a person who knows of his impending death make a careless, let alone false accusation.[17] At the threshold of death, all thoughts of fabricating lies are stilled.[18] In this case, particularly, there is no iota of evidence presented by the defense that would show that the declarant

as well as his wife, Zenaida Yarza, had any ill-motive to falsely implicate accused-appellant to the crime other than to seek justice for the victim's death.

Accused-appellant insists that had the victim believed his death was imminent, he would have immediately given the details of the attack against him; instead, he acquiesced to his wife's suggestion, while they were at the hospital, that they "talk about it later after his condition be safe first." [19] Thus, the defense argues, the victim Rodel Yarza, at the time he gave his so-called "dying declaration" was confident that he would recover from his wounds.

We are unpersuaded. The hope to survive, as we know, springs eternal in the human heart, but then the victim knew in this case that his life was, notwithstanding medical intervention, slowly ebbing away. Contrary to the contention of the defense, Rodel Yarza's alleged acquiescence to his wife's suggestion that they talk about the details of the incident later "when his condition be safe first" bolsters the position that, indeed, the victim was only too aware of the seriousness of his condition.

Moreover, the fact that Rodel Yarza did not expire right after his declaration to his wife at about 10:00 o'clock in the evening of December 14, 1989, but survived until 2:30 o'clock the following morning, or about four (4) hours from the time he made the declaration, will not alter the probative force of his dying declaration since it is not indispensable that a declarant expires immediately thereafter. It is the belief in impending death and not the rapid succession of death, in point of fact, that renders the dying declaration admissible. [20]

Added to the statement of the deceased, which deserves the highest credence, is the fact that it was only Renato Bautista who had the motive to kill the victim considering that, according to the defense, the victim hit accused-appellant with bottle on the left side of the head while the latter was playing cards with his friends. This act of violence is more than sufficient to have impelled accused-appellant to get back at the victim.

Furthermore, Zenaida Yarza's testimony that Efren Bautista, father of Renato Bautista, told her at the hospital that accused-appellant, on the night the crime was committed, went home, took a knife and ran away from him, remains un rebutted by the defense. There is also the fact that Efren Bautista offered to help defray the medical expenses of the victim. This does not at all support accused-appellant's claimed innocence. The relevant portions of Zenaida Yarza's testimony on these points follow:

"xxx xxx xxx

Q: Was there any conversation that took place between you and the parents of Efren Bautista, his wife, and the parents of Renato Bautista?

xxx xxx xxx

A: Yes, sir.

Q: What did the parents of Renato Bautista tell you?

A: He told me, he was wondering why the boy went home and took a knife and ran away, sir, and what he did was to follow his son.

xxx xxx xxx

A: And then he told me 'I will help for whatever expense you incurred.'

Fiscal:

Q: Who told you these statements?

A: Efren Bautista, the father of Rene Bautista, sir.

xxx xxx xxx.” [21]

The defense could have easily impeached the foregoing testimony by presenting Efren Bautista on the stand but, suprisingly, it did not. In any case, Zenaida Yarza’s testimony on her conversation with accused-appellant’s father at the hospital cannot be challenged on the ground of being hearsay for they constitute independently relevant statements. Zenaida Yarza merely testified as to what Efren Bautista told her at the hospital. Certainly, this is within Zenaida’s personal knowledge for she actually saw and heard the things that Efren Bautista told her. The statements attributed to Efren Bautista were offered not to prove the truth of the facts stated therein but only to prove that those statements were actually made.

While we sustain the conviction of accused-appellant, the trial court, however, erroneously considered the aggravating circumstance of evident premeditation against accused-appellant. For there to be evident premeditation, the prosecution must prove: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[22] The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[23] In this case, there is simply an entire absence of evidence to prove that Renato Bautista had deliberately planned to commit the crime, and had persistently and continuously followed such plan. The interval between the initial altercation between the victim and accused-appellant up to the time that accused-appellant allegedly committed the crime,[24] is definitely not a sufficient lapse of time to give the defendant an opportunity to coolly and serenely deliberate on the meaning and consequences of what he planned to do. The absence of the aggravating circumstance of evident premeditation, however, will not alter the penalty imposed by the lower court in light of the presence of abuse of superior strength alleged in the information, which qualifies the killing to murder. The victim, who was alone and unarmed, clearly, was no match against his four (4) assailants, two (2) of whom were armed, one, accused-appellant Renato Bautista, with a knife, and the other, Ricky Sabarin, with a dust pan. It is evident, therefore, that the culprits took advantage of their collective strength to overpower their lone and helpless victim.

WHEREFORE, the Decision of the court a quo dated June 1, 1993 is hereby AFFIRMED in toto.

SO ORDERED.

Bellosillo, (Chairman), Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 3.

[2] Decision, pp. 7-8; Rollo, pp. 18-19.

[3] TSN, 23 September 1992, p. 10.

[4] Id., p. 11.

[5] Ibid.

[6] TSN, 13 July 1992, pp. 11-13.

[7] TSN, 23 September 1992, pp. 9-11.

[8] Section 36, Rule 130.

[9] *Eugenio v. Court of Appeals*, 239 SCRA 207, 216 [1994].

[10] Francisco, Ricardo J., EVIDENCE, Rules 128-134, 1993 ed., pp. 257-258, citing U.S. v. Gil, 13 Phil. 549.

[11] Regalado, Florenz D., Remedial Law Compendium, Vol. 2, 7th Revised Edition., p. 605.

[12] People v. Gonzales, 210 SCRA 44, 49 [1992].

[13] People v. Devaras, 37 SCRA 697, 705 [1971]; People v. Chan Lin Wat, 50 Phil. 182, 191 [1927].

[14] Ibid.

[15] TSN, 13 July 1992, pp. 4-5.

[16] Id., pp. 5-6.

[17] People v. Esquilona, 248 SCRA 139, 142 [1995], citing People v. Dunig, 215 SCRA 469.

[18] People v. Morin, 241 SCRA 709, 715 [1995].

[19] TSN, 23 September 1992, p. 11.

[20] People v. Sabio, 102 SCRA 218, 230-231 [1981], citing U.S. v. Virrey, 37 Phil. 625 [1918].

[21] TSN, 23 September 1992, p. 14.

[22] People v. Lagarto, 196 SCRA 611, 619-620 [1991]; People v. Clamor, 198 SCRA 642, 655 [1991]; People v. Pacris, 194 SCRA 654, 664 [1991]; People v. Iligan, 191 SCRA 643, 653 [1990]; People v. Raquipo, 188 SCRA 571, 577 [1990].

[23] People v. Durante, 53 Phil. 363, 369 [1929].

[24] About thirty minutes or so.

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