

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO DAEN, JR., A.K.A. “NONOY DAING,” ACCUSED-APPELLANT.

G.R. No. 112015. May 26, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Renato Daen, Jr., Raul Henson, Roland Henson, Francisco Suyat, Noning Suyat and Nonoy Onse were charged with the murder of Mario Ponce, Jr. in an Information which read as follows:

"That on or about the 9th day of September, 1990 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with treachery, abuse of superior strength and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of MARIO PONCE, JR y LAZO, by then and there, stabbing the latter on the different parts of his body with the use of bladed weapons, thereby inflicting upon said MARIO PONCE JR y LAZO, serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said victim, in such amount as maybe awarded to them under the provisions of the Civil Code."[1]

Only Renato Daen, Jr. and Raul Henson were tried, as the rest of the group charged remained at large. After the prosecution had rested its case, counsel for accused Raul Henson filed a Demurrer to Evidence, which the trial court granted in an order dated 8 February 1993 dismissing the Information as against Raul Henson. In due time, the trial court found the remaining accused Renato Daen Jr. guilty of the crime charged, sentenced him to reclusion perpetua and ordered him to pay the heirs of the victim the sum of P30,000.00 as actual damages plus P100,000.00 as moral damages.[2]

From the evidence submitted to it, the trial court found that in the afternoon of 9 September 1990, the victim Mario Ponce, Jr. complained to Virgilio Yap, Barangay Captain of Escopa I, Project 4, Quezon City, that his (Mario's) rooster had been stolen. Ponce pointed to "Nonoy Daing," Nonoy Onse, Francisco Suyat and Noning Suyat as the persons who had probably taken his rooster. These four (4) persons were then attending a birthday party.

The four (4) pointed out by Ponce were called by Barangay Captain Yap for a conference. At this meeting, which was held near Ponce's residence, Ponce was unable to pinpoint who among the group of four (4) had actually taken his rooster. No one in the group admitted having taken the bird. The meeting ended at around 5:00 p.m.

The group of Renato Daen returned to the place where the party (basically a drinking session) was going on, a place about ten (10) houses away from the residence of Mario Ponce. The trial court summarized the succeeding events in the following manner:

"At around 9:00 in the evening, Nonoy and Noning Suyat left the party uttering : 'Bakit sa akin ibinibintang ang nawawalang manok?' 'Nakakainis yung taong yon.' This was the version of accused Nonoy Daing whose

real name is Renato Daing [should be Daen].

According, however, to Lamberto Vergara, not an accused here but also in the aforementioned group of male persons, the accused Noning Suyat and Nonoy Onse were the ones who left the drinking session at around 9:00 o'clock in the evening.

As the two [did not return] for quite a while, their friends, namely, accused Renato [Daen] and Ronald Henson followed them to the house of Mario Ponce. They were in turn followed by Lamberto Vergara and Roberto Nabual to the same place, that is, in front of the 2-storey residence where Mario Ponce lives.

There an altercation ensued and someone in the group of those who went to the Ponce house from their drinking session at the birthday party stabbed Mario Ponce. Mario sustained two frontal stab wounds at the right costal region. The neighbors helped in bringing Mario to the hospital in a tricycle but he expired early next morning."^[3]

According to the Medico Legal Report submitted by the prosecution, the victim, Mario Ponce, Jr., sustained two (2) frontal stab wounds at the right costal region.^[4]

The trial court was thus presented with the problem of determining who, among the several persons temporarily congregated in front of the house of Mario Ponce, Jr., had in fact stabbed Ponce to death.

The prosecution presented Remily Ponce, sister of the deceased victim, and she testified that she was at the balcony of their house with her cousin Bernardino Lazo when she saw the group of Renato Daen having a heated argument with her brother right in front of their house and just below the balcony. The argument erupted into a commotion, but she did not see who had stabbed her brother.

Prosecution witness Bernardino Lazo, a cousin of the victim, was more specific. Lazo testified that he was at the balcony of the second floor of their house and saw the whole incident. He declared that he saw Noning Suyat and Mario Ponce talking and drinking with each other just outside the Ponce house, when Ronald Henson soon followed by other members of Renato Daen's group, arrived. A commotion ensued soon after the group's arrival. Renato Daen and five (5) other persons surrounded the victim and someone held the latter's hands. Renato Daen then stabbed Mario Ponce twice with his left hand. Witness Lazo also testified that among the group, he saw two (2) persons armed with knives, to wit: Renato Daen and Nonoy Onse.

Renato Daen denied that he had stabbed the victim. Daen claimed that Noning Suyat, and not he (Renato Daen) had knifed the victim in the stomach. The testimony of the defense witnesses was summed up by the trial court in its decision:

"According to herein accused Renato 'Nonoy' Daing [should be Daen], he, Nonoy Onse and Ronald Henson followed Nonoy [should be Noning] Suyat to the house of Mario Ponce. There they saw Suyat and Mario arguing. Mario then pushed Suyat so violently that Suyat fell to the ground. Suyat then drew his knife and lunged at Mario's stomach. After that, Suyat told the three (Daing, Henson and Onse) not to tell anyone and threatened them if they do not follow his advice.

Mr. Lamberto Vergara, another defense witness, testified that [Noning] Suyat together with Nonoy Onse left the party that night. When they did not return, Renato [Daen] and Ronald Henson were asked by the celebrant to follow the two. Vergara followed suit.

Mr. Vergara saw Suyat and Mario talking while Henson was standing nearby and [Daen] and Onse were conversing with each other. Then at a certain point of their conversation, Mario said to Ronald Henson: 'Putang ina mo.' Ronald went towards Mario but Suyat stopped Ronald Henson. It was then that Mario pushed Suyat who fell down and hit a wall. When Suyat stood up he pulled out a knife and stabbed Mario.

According to Mr. Vergara, the victim was stabbed only once by Suyat only. He saw this when he turned his head as he was then leaving the place when Mario said: 'Putang ina mo.'

A third defense witness Robert Nabual, testified that it was Suyat, Ronald Henson and Nonoy Daing who returned to the house of Mario Ponce from where the birthday party was being held. He followed the trio. When Mr. Nabual arrived at Mario Ponce's house he saw [Noning] Suyat and Mario Ponce having an argument. Then Mario pushed [Noning] Suyat who fell on the ground. [Noning] then stood up and stabbed Mario. Nonoy Daing was there during that whole time at a store buying cigarette.

After [Noning] Suyat has stabbed Mario, Rodel Henson also stabbed Mario who fell down. Thereafter, according to Mr. Nabual, Suyat and Henson ran away. These two accused like their co-accused, with the exception of Raul Henson (a brother of Rodel) and Renato [Daen] having remained at-large to date.

According to Mr. Nabual, accused Renato [Daen] was also shocked by the incident so he had to help [Daen] home after the body of Mario was taken by a tricycle to the hospital."^[5]

Renato Daen, Jr. is now before this Court appealing his conviction, claiming that the court a quo had erred:

(1)

In convicting [him] of the crime of murder on the sole basis of the biased testimony of prosecution witness Bernardino Lazo, cousin of the deceased Mario Ponce, Jr.; and

(2)

In convicting [him] of the crime of murder because neither treachery nor evident premeditation had attended the killing, contrary to the conclusion of the trial court.

In respect of the first supposed error, we note that the trial court had explicitly appraised the conflicting testimony of the prosecution and defense witnesses and had carefully concluded that prosecution witness Mr. Bernardino Lazo was more credible than the defense witnesses:

"After a considerable thought and reflection on the conflicting evidence the court is of the opinion that the testimony of Mr. Bernardino Lazo is more credible than that of Renato [Daen], Lamberto Vergara, and Renato Nabual.

First. The testimonies of the three defense witnesses are contradictory to each other on the vital fact of who returned to the house of Mario Ponce to confront him. Accused [Daen] said that it was Suyat alone who left the party. It was only much later when he, Ronald Henson and Onse followed Suyat.

But according to Mr. Vergara, it was Suyat and Onse who left the party and it was only much later, on request of the celebrant, that [Daen] and Henson followed suit.

But then, according to Mr. Nabual, it was Suyat, Henson, and [Daen] who left the party and then Mr. Nabual followed them to the Ponce house.

Second. According to [Daen], Suyat stabbed Mario only once. He saw no one else who stabbed Mario. This was also the testimony of Vergara.

Yet, the medical findings show that Mario was stabbed twice.

Mr. Nabual testified that it was Suyat and Ronald Henson who stabbed Mario once each and then the duo ran away.

There is here again a contradiction about a vital portion of the incident at bar among the defense witnesses.

Third. According to Mr. Nabual, there were two persons who stabbed Mario, namely, Suyat followed by Ronald Henson. But according to Mr. Vergara and accused [Daen] it was only Suyat who stabbed Mario. This is once more a major contradiction.

From the foregoing major inconsistencies of the defense witnesses thus easily gleams a great motive to move [Daen] away from the case.

Yet, it is quite clear that [Daen] was one of those who, after drinking a good amount of wine had returned to the house of Mario with several others evidently to confront Mario for suspecting their group of stealing his rooster. The excuse offered that [Daen] merely wanted to fetch Suyat back to the party is a limp one. For, admittedly [Daen] never even bothered to bring Suyat back to the party as, according to [Daen], he merely watched from a store while Mario and Suyat were arguing. And this excuse is even unbelievable because [Daen] admitted on cross that he was just right beside Mario's side.

The testimony of Lazo, although a cousin of the victim is the more credible one. It was delivered frankly and naturally. Mr. Lazo's lack of ulterior motive is disclosed quite clearly by the fact that he frankly relieved accused Raul Henson of any criminal responsibility although Raul is a brother of accused Ronald Henson who according to defense witness Nabual stabbed Mario."^[6]

The defense has presented to this Court neither factual circumstance nor argument which would compel it to overturn the conclusions reached above by the trial court.

This Court has ruled often enough that blood relationship of a witness to the victim does not by itself impair the credibility of the former.^[7] The circumstance that Bernardino Lazo was a cousin of the unfortunate Mario Ponce does not ipso facto make Lazo a biased witness whose testimony must be discarded. To warrant rejection of the testimony of a relative, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective or that improper or evil motives had moved the witness falsely to incriminate the appellant.^[8] Appellant Renato Daen did not do so.

Instead, appellant Renato Daen pointed to certain claimed inconsistencies in the testimony of prosecution witness Bernardino Lazo which, the defense contended, rendered Lazo's testimony of doubtful veracity. Firstly, Lazo testified that he was alone on the balcony of his home when he witnessed the stabbing of Mario Ponce, while Remily Ponce had testified that she was also on the same balcony with Lazo at that time. Secondly, Lazo stated that when he spoke to the victim, the latter was already unable to talk. On cross-examination, however, Lazo said that the victim was able to say "Nasaksak ako." Further, appellant contended that Lazo, who had testified that he had witnessed the whole incident, did not know in what specific part of the body Ponce had sustained the stab wounds.

We have examined the record of this case, and we consider that the inconsistencies alleged by the defense in respect of the testimony of Bernardino Lazo, are more apparent than real. Further, to the extent that inconsistencies were in fact shown, they appear to the Court to relate to details of peripheral significance which do not negate or dissolve the positive identification by Lazo of Renato Daen as the perpetrator of the crime.

Thus, while witness Lazo had stated that he was alone on the balcony when he observed the commotion and the stabbing below, and while witness Remily Ponce had declared that she was with her cousin Lazo on the balcony at that time, neither statement put in question the presence of eye-witness Bernardino Lazo at the critical time and place. Both witnesses agreed and in fact confirmed that Lazo was indeed on the balcony of the Ponce house at the time of the stabbing. At most, the presence of Remily Ponce might perhaps have been questioned by appellant

Daen; but this would not offer any real comfort to appellant since Remily could not and did not testify as to the identity of the attacker who had stabbed her brother.

In respect of the second supposed inconsistency, Bernardino Lazo had testified that immediately after being stabbed, Mario Ponce went up the house and told his stunned relatives that he had been stabbed. When, however, Lazo spoke to the victim, Mario was no longer able to respond.[9] Remily Ponce corroborated Lazo's testimony on this point. Remily stated that after the commotion in front of their house had erupted, her brother struggled upstairs, told their family that he had been stabbed, and then collapsed on the floor.[10]

The failure of Lazo specifically to state in what particular part of the body Mario Ponce had been stabbed by appellant Daen, did not render Lazo's testimony either incredible or doubtful. Time and again this Court has acknowledged that different human minds react differently when confronted with a sudden and shocking event. A witness may sometimes ignore certain details which at the time appeared to him as insignificant but which, to another person under the same circumstances, would seem noteworthy.

The stabbing to death of Mario Ponce had occurred on 9 September 1990, about two (2) years before the trial of the case began in 1992. Considering the lapse of time between the occurrence of the incident and the hearings on the criminal case, one can hardly fault the witnesses if they are unable to narrate the details of the occurrence with absolute accuracy and completeness. A witness is not expected to remember an occurrence with perfect recollection down to insignificant and minute details.[11] In *People v. Santito, Jr.*, [12] the Court had noted that:

"Testimonial discrepancies could be caused by the natural fickleness of memory which tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony. It would have been more suspicious if the witness had been able to pinpoint with clarity or describe with precision the exact sequence of events. The most candid witness oftentimes makes mistakes but such honest lapses do not necessarily impair his intrinsic credibility." [13]

The Court, however, is unable to accept the trial court's holding that the killing was attended by treachery. Treachery as a qualifying circumstance is properly found when two (2) conditions concur: (1) the employment of means, methods, or manner of execution which would ensure the offender's safety from defensive or retaliatory acts on the part of the offended party, that is, that the latter had no opportunity to defend himself or react against the offender; and (2) that such means, methods, or manner of execution had been deliberately or consciously chosen.[14] In the case at bar, the prosecution did not, to the mind of the Court, establish the presence of the second condition. Although the testimony of prosecution witness Lazo tended to show that the victim had been surrounded by appellant Renato Daen and five (5) others, one of whom had pinned down the victim's hands, there was no showing that such manner of execution had been deliberately chosen, designed and brought about. Neither can it be contended that the attack upon Mario Ponce was sudden and unexpected, without the slightest provocation on his part. The evidence showed that the stabbing incident had been immediately preceded by confrontation between the victim on the one hand and the appellant's group on the other, and that the victim had in fact suddenly shoved back one of the group with such force that the latter fell to the ground. It appears to the Court that, all the circumstances considered, the stabbing was probably the result more of a sudden impulse of the moment generated by the altercation during the confrontation, than the outcome of conscious design or choice on the part of appellant Daen and his group. We believe that the prosecution failed to establish with moral certainty the presence of treachery in this case. The well-settled rule is that any circumstance which would qualify a killing to murder must be proved as indubitably as the killing itself.[15]

Although the Information had charged evident premeditation on the part of the accused, the trial court did not find the presence of that circumstance. Indeed, the elements of this modifying circumstance were clearly wanting in the instant case.

Nevertheless, we find that the qualifying circumstance of taking advantage of superior strength, as alleged in the Information, attended the killing of Ponce. Where it is shown that the attack had not been made with alevosia, the number of appellant's group and the concertedness of their acts vis-a-vis a defenseless person may constitute abuse of superior force.[16] In the present case, appellant Daen undeniably took advantage of the presence of members of his group, which presence facilitated the stabbing of Mario Ponce. Appellant's group numbered more than five (5) male persons, two (2) of whom were armed with bladed weapons: the victim Mario Ponce was unarmed, surrounded by this group and his hands were held on to by at least one member of the same group as Daen lunged at him with a knife. The slaying of Mario Ponce must still be characterized as murder.

Under Article 248 of the Revised Penal Code,[17] murder is punishable by reclusion temporal in its maximum period to death. There being no generic aggravating or mitigating circumstance, that penalty in its medium period, that is, reclusion perpetua, is properly imposable.

Turning to the civil aspect of the crime, the indemnity for death to which the heirs of Mario Ponce, Jr. are entitled, should be raised to P50,000.00 in consonance with recent jurisprudence of the Court. The award by the trial court of P30,000.00 as actual damages should, upon the other hand, be reduced to P3,500.00 which is the only amount that was evidenced by a receipt.[18] The award of moral damages is subsumed in the civil indemnity for death; to the extent, however, that the award exceeds P50,000.00, it is bereft of sufficient factual basis.

WHEREFORE, the decision of the trial court finding Renato Daen, Jr. guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, is hereby **AFFIRMED**. Appellant is ordered to pay the heirs of Mario Ponce the amount of P50,000.00 as civil indemnity for death; and another amount of P3,500.00 in concept of actual damages.

SO ORDERED.

Romero, Melo, Vitug, and Francisco, JJ., concur.

[1] Rollo, p. 1.

[2] Trial Court Decision, p. 5; Rollo, p. 39.

[3] Rollo, pp. 53-54.

[4] Medico-Legal Report, Exhibit "C", Record, p. 121.

[5] Trial Court Decision, p. 3; Rollo, p. 37.

[6] Rollo, pp. 55-56.

[7] *People vs. Tinampay*, 207 SCRA 425 [1992]; *People vs. Mision*, 194 SCRA 432 [1991]; *People vs. Espinosa*, G.R. No. 104596, 23 November 1993; *People vs. Balderama*, G.R. No. 89597-98, 17 September 1993.

[8] *People vs. Reception*, 198 SCRA 670 [1991].

[9] TSN, 9 June 1992, pp. 14-18.

[10] TSN, 18 March 1992, p. 25.

[11] *People vs. Placido, Jr.*, 199 SCRA 410 [1991].

[12] G.R. No. 91628, 201 SCRA 87 [1991].

[13] 201 SCRA at 96.

[14] *People vs. Ponayo*, G.R. No. 111523, 10 August 1994; and the cases cited therein.

[15] *People vs. Decena*, G.R. No. 107874, 4 August 1994; and the cases cited therein.

[16] *U.S. vs. Lasada*, 21 Phil. 287 [1912]; *People vs. Cantre*, 186 SCRA 76 [1990]; *People vs. Hatague*, 207 SCRA 779 [1992].

[17] Republic Act No. 7659, effective 31 December 1993 amending this Article cannot be given retroactive effect as it would be unfavorable to accused-appellant for said Republic Act imposes the graver penalty of reclusion perpetua to death (*People vs. Ponayo*, G.R. No. 111523, 10 August 1994).

[18] See *People vs. Degoma*, 209 SCRA 266 [1992].

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