

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT ALBAN, DEMETRIO ALBAN Y PANINGBATAN @ “TING ALBAN,” BING ALBAN AND ARTHUR DOE, ACCUSED. ROBERT ALBAN AND DEMETRIO ALBAN...

G.R. No. 112279. July 03, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

The brothers Robert Alban and Demetrio Alban y Paningbatan alias "Ting" appeal from a decision of the Regional Trial Court, Branch 44 of Dagupan City finding them guilty beyond reasonable doubt of murder.

Robert and Demetrio Alban were charged, together with Bing Alban and one Arthur Doe, with murder in an information which read as follows:

"That on or about July 31, 1991 at Brgy. Nibaliw East, municipality of San Fabian, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapons and a gun, conspiring, confederating and mutually helping one another with intent to kill with treachery and evident premeditation did, then and there wilfully, unlawfully and feloniously chase, attack, stab and shoot ROBERTO SALINAS alias SIAKOL inflicting upon him the following injuries:

- gunshot wound c Point of Entry over the left lateral side of the neck; slug recovered at the right side of the neck middle portion just beneath the skin
- stab wound 2 inches over the (R) chest inframammary area, 7 inches in depth slanting to the right hitting the (R) middle lobe of the lung
- stab wound (R) bet. T10-T12 lateral side one inch, 7-8 inches in depth going upwards hitting the lower lobe or (R) lung
- stab wound 7 inches (R) diaphragmatic area going upwards hitting the lower liver
- stab wound distal third (R) forearm
- stab wound middle half of left arm

which caused his instant death, to the damage and prejudice of his heirs.

Contrary to Art. 248, Revised Penal Code."^[1]

Only Robert and Demetrio were arraigned and pleaded not guilty and thereafter stood trial because Bing Alban and the Arthur Doe, who remained unidentified, were never apprehended.

After trial, the court a quo rendered judgment the dispositive portion of which read as follows:

"WHEREFORE, the Court finds accused Robert Alban and Demetrio Alban y Paningbatan @ Ting Alban

guilty beyond reasonable doubt as principals of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code with the attendance of the specific aggravating circumstance of cruelty and hereby sentences accused Robert Alban and Demetrio Alban y Paningbatan alias Ting Alban to suffer the penalty of Reclusion Perpetua with all its accessory penalties, to indemnify the heirs of the victim Roberto Salinas, in the amount of FIFTY THOUSAND PESOS (P50,000.00), to pay the sum of THIRTY THOUSAND PESOS (P30,000.00) as actual damages and to pay the costs.

SO ORDERED."[2]

The relevant facts as found by the trial court are based mainly on the testimony of the prosecution's sole eyewitness, Joseph Salinas, thirteen-year old son of the victim Roberto Salinas. Joseph testified that from October 1990 to 31 July 1991 he was living with his father Roberto and the latter's common law wife, Fe Gutierrez, at No. 36 Nibaliw East, San Fabian, Pangasinan. On 31 July 1991, after they had gone fishing, Roberto decided to have a bottle of beer at a nearby sari-sari store. Joseph proceeded to go home. At about 6:00 in the afternoon, Fe Gutierrez instructed Joseph to fetch his father. When Joseph was about seven meters away from the sari-sari store, he saw his father being attacked by four men. Joseph saw Robert and Demetrio stabbing his father while the other two men restrained his hands. During his direct examination, Joseph demonstrated how the left hand of his father was squeezed as the two accused stabbed him. An unidentified person, Arthur Doe, stabbed the middleback part of the victim. Thereafter, when Roberto was slumped prostrate against the wall, he was shot at the left temple by a person who has not, as yet, been apprehended.[3]

Based on the findings of Dr. Leopoldo Manalo, a medico-legal officer of San Fabian, Pangasinan, it was established that the death of Roberto Salinas was caused by cardio--respiratory arrest, secondary to hemorrhagic shock, multiple gunshot wounds and stab wounds.[4]

For their part, accused Robert and Demetrio interposed the defense of alibi. Robert testified that he had gone fishing in the afternoon of 31 July 1991 and came home only the following morning.[5] Demetrio, on the other hand, testified that at 8:00 in the morning of 31 July 1991, he had left San Fabian with his wife to go to Barrio Malimpec, San Carlos City to get provisions from his Nana Sion Paningbatan. He claimed that he stayed overnight in Barrio Malimpec.[6]

The defense also presented Nenita David, Melba Caguya and Marife Raca as witnesses to show that contrary to Joseph's claim, he had never lived with his father in No. 36 Nibaliw East, San Fabian, Pangasinan. The three (3) women further testified that they did not see Joseph in the vicinity of Nibaliw East, San Fabian on the day his father was killed.[7]

Appellants Robert and Demetrio now come to this Court assailing their conviction in the trial court and making the following assignment of errors:

- The lower court erred in giving undue credence to the testimony of Joseph Salinas, despite its inherent incredibility;
- The lower court erred in finding the presence of treachery despite evidence showing opportunity for the deceased Roberto Salinas to defend or totally avoid injuries to himself;
- The lower court likewise erred in convicting the accused-appellants of murder despite the weakness and insufficiency of the prosecution's evidence.[8]

In impugning Joseph's identification of them as the malefactors, appellants point to certain circumstances which according to them seriously affect the credibility of Joseph as a witness. Specifically they aver that (a) Joseph, because of his tender age, could not "properly perceive the true circumstance of the case" and "accurately relate

what he had really observed"; (b) Joseph may be biased as the victim was his father; (c) Joseph's reaction at seeing his father being stabbed and shot was "very strange"; and (d) Joseph's testimony was not corroborated.[9] Appellants contend that all these circumstances taken together make the testimony of Joseph "highly unbelievable." The Court finds no merit in this contention.

It is a well-settled rule in this jurisdiction that questions regarding the competency of a child to testify rest primarily with the trial judge who sees the proposed witness, observes his manner, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath.[10] In the case of Joseph, a 13-year old boy, the trial court found him to be a competent witness and his testimony worthy of full faith and credence. The following is part of Joseph's testimony relied upon by the trial court to support the conviction of Robert and Demetrio:

"Q:

Who were those persons who stabbed your father?

A:

That one, sir.

Q:

Will you please go down from your seat and touch those persons who stabbed your father?

A:

Witness pointed to a person seated inside the courtroom, who when asked his name, said 'I am Demetrio Alban.' He pointed again to another person who later identified himself as Robert Alban.

Q:

How many persons killed your father?

A:

Four, sir.

Q:

How did these persons who according to you stabbed your father. How did they stab your father?

A:

They held the hand of my father and then he was stabbed.

Q:

How many persons held the hand of your father and then stabbed him?

A:

Two of them sir.

Q:

Will you go down from your seat and point those two persons whom you said stabbed your father?

A:

They are the ones sir. (Witness is pointing to Robert Alban and Demetrio Alban)

x x x x x x x x

Q:

Now will you stand up and then demonstrate how your father - in order to clarify everything how your father was stabbed?

A:

Like this sir. (Witness is demonstrating how his father was stabbed. He showed that the left hand of his father was squeezed and witness is showing a forward thrust at the back of the victim, at his left side.)

Q:

What about the other person who stabbed your father?

A:

The other accused also stabbed the victim at the middle back part of the victim.

Q:

When these persons, the two persons accused after they stabbed your father, what did your father do or did he go anywhere?

A:

He slumped against a wall, sir.

Q:

Where did your father slump against the wall? What happened next after if there is any?

A:

He was shot at the temple, sir."[11]

The testimony of Joseph was straightforward, coherent and convincing. He was able clearly to describe the manner in which his father was killed and he positively identified Robert and Demetrio as among the four malefactors responsible for his father's death. The Court finds no basis for appellants' assertion that Joseph could not "properly perceive the true circumstance[s] of the case" and "accurately relate what he had really observed." The Court also notes that this assertion runs counter to its avowed doctrine that a court may "give full faith and credence to the testimony of children of sound mind once it is established that they understood the nature and character of an oath as their testimony is likely to be more correct and truthful than that of older persons." [12]

Appellants also seek to impugn the credibility of Joseph as a witness by suggesting that he may be biased because of his relationship to the victim. This effort is in vain. Mere relationship of the victim to a witness does not automatically impair his credibility and render his testimony less worthy of credence where no improper motive can be ascribed to him for testifying.[13] The record of the case will show that appellants did not even try to ascribe any motive on the part of Joseph to lie and falsely accuse them of killing his father.

Appellants try to make an issue of the fact that Joseph did not do anything upon seeing his father being stabbed and shot. The appellants found his reaction "very strange and against the natural experience of mankind." The Court, however, finds Joseph's reaction normal under the circumstances. The sight of his father being subjected to

deadly assault was understandably too much of a shock for the 13-year old boy. The shock rendered him incapable of doing anything. He remained rooted at the spot where he was standing as he watched helplessly the four (4) malefactors, full grown men, stab and shoot his father. Joseph's reaction is far from contrary to human experience. Besides, the Court has consistently ruled that "there is no standard form of human behavioral response when one is confronted with a strange, startling and frightful experience." [14]

The fact that no other witnesses came forward to corroborate Joseph's testimony does not make it less credible. The Court has taken judicial notice of the natural reticence of most people to get involved in a criminal case. They are usually fearful of possible reprisals from the accused or his family and relatives. [15] It is not, therefore, unusual that only Joseph testified about the killing of his father even though it was committed near a sari-sari store where people in the rural areas usually congregate.

The Court cannot give much credence to the testimony of defense witnesses Marife Raca, Nenita David and Melba Caguya. The gist of their testimonies was that Joseph never lived in No. 36 Nibaliw East, San Fabian. Unlike Joseph, the three defense witnesses were not at the scene of the crime at the time it was committed. They failed to directly rebut Joseph's positive testimony regarding the killing of his father. Moreover, Lourdes Salinas, grandmother of Joseph and mother of the victim, testified that Joseph indeed lived with his father in San Fabian as he claimed. The victim Roberto had brought him along to take care of the family's pigs and chickens. [16]

The Court accordingly has no basis at all for overturning the trial court's ascription of full faith and credence to the testimony of Joseph, as well as to his positive identification of the appellants as among the perpetrators of the crime charged. It also follows that appellants defense of alibi must fail. It is firmly established in our jurisprudence that the defense of alibi cannot prevail over positive identification of the accused by the prosecution witnesses. [17]

The Court also finds that the trial court correctly appreciated the attendance of the qualifying circumstance of treachery. As testified to by Joseph, the four malefactors ganged up on his father in the following manner:

"Q:

How many persons killed your father?

A:

Four, sir.

Q:

How did these persons who according to you stabbed your father. How did they stab your father?

A:

They held the hand of my father and then he was stabbed.

Q:

How many persons held the hand of your father and then stabbed him?

A:

Two of them, sir.

x x x x x x x x

Q:

Now will you stand up and then demonstrate how your father in order to clarify everything how your father was stabbed?

A:

Like this, sir. (Witness is demonstrating how his father was stabbed. He showed that the left hand of his father was squeezed and witness is showing a forward thrust at the back of the victim, at his left side).

x x x x x x x x

Q:

Where did your father slump against the wall? What happened next after if there is any?

A:

He was shot at the temple, sir."[18]

Contrary to appellants' claim,[19] the fact that Roberto was able to momentarily run away from his assailants does not negate the element of treachery. Treachery exists when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[20] In this case, at the time that Robert and Demetrio stabbed Roberto, who was not armed, his left hand was held and twisted behind him by the two (2) other assailants, effectively rendering Roberto helpless and unable to either flee or ward off his attackers. This was clearly intended by them to ensure the success of their assault without risk to themselves. Additionally, Roberto was shot at the temple when he was already slumped against the wall, grievously wounded and totally defenseless. From all indications, the mode of attack adopted by appellants and their co-assailants qualifies the killing to murder.

The trial court erred, however, in finding that the generic aggravating circumstance of cruelty attended the commission of the crime. It based its appreciation thereof on the autopsy report submitted by Dr. Leopoldo Manalo detailing the six (6) wounds sustained by the victim:[21]

1)

Gun shot wound c Point of Entry over the left lateral side of the neck; slug recovered at the (R) side of the neck middle portion just beneath the skin;

2)

stab wound 2 inches over the (R) chest inframammary area, 7 inches in depth slanting to the right hitting the (R) middle lobe of the lung;

3)

stab wound (R) between T10-T12 lateral side one inch, 7-8 inches in depth going upwards hitting the lower lobe of (R) lung;

4)

stab wound 7 inches (R) diaphragmatic area going upwards hitting the lower liver;

5)

stab wound distal third (R) forearm;

6)

stab wound middle half of left arm.

Dr. Manalo testified that stab wounds number 2, 3 and 4 caused the death of Roberto and that the other wounds, even the gun shot wound, were in fact unnecessary to produce death of the victim. The Court is not convinced that cruelty had been sufficiently shown on the basis of this finding alone. Cruelty cannot be appreciated in the absence of any showing that appellants, for their pleasure and satisfaction, caused the victim to suffer slowly and painfully and inflicted on him unnecessary physical and moral pain.[22] The mere fact that wounds in excess of what was indispensably necessary to cause death were found in the body of the victim does not necessarily imply that such wounds were inflicted with cruelty and with the intention of deliberately and inhumanly intensifying or aggravating the sufferings of the victim.[23]

The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. There being no mitigating or aggravating circumstance which attended the commission of the crime, the imposable penalty is reclusion perpetua.[24]

WHEREFORE, the appealed decision of the trial court is AFFIRMED except with respect to the finding of the presence of cruelty as an aggravating circumstance which is hereby DELETED.

SO ORDERED.

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

[1] Rollo, p. 7.

[2] RTC Decision, p. 9; Rollo, p. 32.

[3] TSN, Testimony of Joseph Salinas, 27 November 1992, pp. 8-18.

[4] Exhibit 'H,' Folder of Exhibits.

[5] TSN, Testimony of Robert Alban, 2 February 1993, pp. 3-5.

[6] TSN, Testimony of Demetrio Alban, 2 February 1993, pp. 3-5.

[7] TSN, Testimony of Nenita David, 4 January 1993, pp. 14-16; TSN, Testimony of Melba Caguya, 25 January 1993, pp. 10-16; TSN, Testimony of Marife Raca, 26 January 1993, pp. 10-13.

[8] Appellants' Brief, pp. 1-2; Rollo, pp. 45-46.

[9] Appellants' Brief, pp. 7-9; Rollo, pp. 51-53.

[10] *People vs. Libungan*, 220 SCRA 315 (1993).

[11] TSN, Testimony of Joseph Salinas, 27 November 1992, pp. 11-13.

[12] *People vs. Tanduyan*, 236 SCRA 433 (1994); *Collado vs. Intermediate Appellate Court*, 206 SCRA 206 (1992); *People vs. Pedrosa*, 169 SCRA 546 (1989); *People vs. Ricaplaza*, 23 SCRA 374 (1968); *People vs. Alambra*, 55 Phil. 518 (1931).

[13] *People vs. Pastoral*, 226 SCRA 219 (1993); *People vs. Enciso*, 223 SCRA 675 (1993); *People vs. Joloy*, 222 SCRA 801 (1993); *People vs. Sarino* 221 SCRA 234 (1993); *People vs. Villanueva*, 208 SCRA 810 (1992).

[14] *People vs. Flores*, 217 SCRA 613 (1993); *People vs. Danico*, 208 SCRA 472 (1992); *People vs. Raptus*, 198 SCRA 425 (1991); *People vs. Lagota*, 194 SCRA 92 (1991); *People vs. Radomes*, 141 SCRA 548 (1986).

[15] *People vs. Torres*, 232 SCRA 32 (1994); *People vs. Fuertes*, 229 SCRA 289 (1994); *People vs. Dominguez*, 217 SCRA 170 (1993).

[16] TSN, Testimony of Lourdes Salinas, 24 December 1992, pp. 3-9.

[17] *People vs. Armada*, 225 SCRA 644 (1993); *People vs. Vergara*, 221 SCRA 611 (1993); *People vs. Divina*, 221 SCRA 543 (1993); *People vs. Sadiangabay*, 220 SCRA 551 (1993); *People vs. Dominguez*, 217 SCRA 170 (1993).

[18] TSN, Testimony of Joseph Salinas, 27 November 1992, pp. 12-13.

[19] Appellants' Brief, p. 10; Rollo, p. 54.

[20] *People vs. Cruza*, 237 SCRA 410 (1994); *People vs. Francisco*, 234 SCRA 333 (1994); *People vs. Retuta*, 234 SCRA 645 (1994); *People vs. Silong*, 232 SCRA 487 (1994); *People vs. Parangan*, 231 SCRA 682 (1994).

[21] Exhibit 'G,' Folder of Exhibits.

[22] *People vs. Ilaoa*, 233 SCRA 231 (1994); *People vs. Luna*, 58 SCRA 198 (1974); *People vs. Llamera*, 51 SCRA 48 (1973)

[23] *People vs. Tonog*, 205 SCRA 772 (1992); *People vs. Siblag*, 37 Phil. 703 (1918)

[24] Art. 64(1), Revised Penal Code

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