

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BIENVENIDO BAYDO Y ARCAMO, ACCUSED-APPELLANT.

G.R. No. 113799. June 17, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Well-entrenched is the doctrine that alibi cannot prevail over positive, clear and unbiased testimony identifying the accused and narrating his participation in the crime. Well-settled also is the rule that moral damages -- whether in civil or criminal cases -- cannot be awarded in the absence of proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[1]

In an Information[2] dated August 18, 1992, Assistant Prosecutor Napoleon V. Dilag charged Appellant Bienvenido Baydo y Arcamo with the crime of murder allegedly committed as follows:[3]

“That on or about June 14, 1992 in the City of Manila, Philippines, the said accused, conspiring and confederating with one GEORGE NAVARRO Y PADILLA @ BOY HAPON[4] who has been previously charged with the same offense with the Regional Trial Court of Manila under Crim. Case No. 92-108762, and mutually helping each other, with intent to kill and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of LEONARDO PUNONGBAYAN, JR. Y CONCEPCION, by then and there shooting him on the chest and left thigh with a handgun, thereby inflicting upon the said Leonardo Punongbayan, Jr. y Concepcion gunshot wounds which were the direct and immediate cause of his death thereafter.”

Upon arraignment, Appellant Baydo, assisted by counsel, entered a plea of not guilty.[5] Trial ensued in due course. In its Decision dated January 21, 1994, the Regional Trial Court of Manila, Branch 45,[6] found appellant guilty of murder. The dispositive portion of the Decision reads:[7]

“WHEREFORE, in view of the foregoing, this Court renders judgment finding the accused BIENVENIDO BAYDO guilty beyond reasonable doubt and hereby sentenced (sic) him to suffer the penalty of reclusion perpetua, together with the accessory penalties provided in Art. 40; to indemnify the widow, Evelyn Punongbayan, for the death of her husband (Leonardo Punongbayan) in the amount of P50,000.00; to pay P70,000.00 for moral damages; and to pay the cost.”

Hence, this appeal.

The Facts

The trial court discussed the contending versions of the prosecution and the appellant as follows:[8]

“This is the evidence for the prosecution -

“ROSITO PUNONGBAYAN testified that at about 4:30 in the afternoon of June 14, 1992, he was inside their yard at 1712 Diamante St., San Andres Bukid, Manila, when he heard a shot; he saw his uncle Leonardo

Punongbayan talking with somebody at the corner of the street; as he was going out of their house, he heard another shot and that shot hit his uncle's chest; Goerge (sic) Navarro alias Boy Hapon, and Bienvenido Baydo shot (sic) his uncle with a .38 caliber; his uncle sustained three gunshot wounds on the chest and one on the left thigh and Bienvenido Baydo finished his uncle with the second and third shots directed on (sic) the chest; he was then 6 meters away from accused Bienvenido Baydo; after his uncle slumped on the ground, they (referring to his 3 cousins who were just within the vicinity, and 3 brothers who came out of their house when they heard the shots) approached their uncle and they pursued the two assailants who ran towards Concia St.; they failed to catch the assailants and they brought their uncle to the hospital; he gave a statement to the WPD on or about July 16, 1992; on August 15, 1992, they were summoned by the police officer and he pointed to Bienvenido Baydo and Goerge (sic) Navarro at the Headquarters; thereafter, his second statement was taken.

"EVELYN PUNONGBAYAN testified that accused Bienvenido Baydo is a close friend and the godfather of their father-in-law; he saw Goerge (sic) Navarro and Bienvenido shot (sic) her husband with a .38 caliber gun because she was only at the opposite side of the road; her husband was then seated at a bench outside their house with a companion named Romy Mallar at the corner of Onyx and Diamante Streets; the two were talking to each other when they (she and Aling Maria) heard a gun shot; she saw her husband kneeling and pleading for his life but the assailants shot him at the stomach and near the heart/chest; Bienvenido Baydo told Goerge (sic) Navarro to finish the victim; subsequently her husband slumped on the pavement; George Navarro shot her husband first on the thigh while Bienvenido Baydo had a grudge against the (sic) Punongbayan because the former was stabbed by Edgar Punongbayan who lives (sic) with the victim; she knew Baydo very well because they used to borrow money from him, her husband was then 36 years old, a taxi driver, a Barangay Tanod and the sole breadwinner in the family with four (4) children; her husband's daily income was P300.00 or P400.00 a day; she is (sic) asking for P70,000.00 to assuage her moral sufferings; she informed the police officer that she has (sic) no knowledge about the killing because she was then afraid; she was about 25 meters from the place of incident; in connection with the death of her husband, she incurred expenses in the sum of P41,510.00 representing burial, mass, transportation and miscellaneous expenses contained in an itemized list prepared by her (Exhs. 'B-4'); some are (sic) covered by receipts like the Receipt dated June 18, 1992 issued by Funeraria Floresco in the amount of P12,900.00 (Exh. 'B'); the Receipt for the 'lapida' and death record in the sum of P370.00 are Exhs. 'B-1' and 'B-2' and the Receipt for the mass in the sum of P300.00 is Exh. 'B-3'; the Death Certificate of Leonardo Punongbayan is Exh. 'A' while the Post Mortem Certificate is Exh. 'A 1'.

"SPO1 Henry Nuñez declares that on August 14, 1992 he investigated the murder case against the accused Bienvenido Baydo who was surrendered by Ruther Batuigas of People's Journal; he took the additional statement (Exhs. 'C', 'C-1' and 'C-2') of the eyewitness Rosito Punongbayan while the original statement, (Exhs. 'I' and 'I-1') wherein accused Bienvenido Baydo was named by the witness was taken by SPO3 Armando de Guzman, a colleague in the Division; Rosito Punongbayan identified Bienvenido Baydo as one of the assailants; he prepared and signed the Advance Information dated June 14, 1992 (Exhs. 'D', '-1' and 'D-2'), the Progress Report dated August 15, 1992 (Exhs. 'E', 'E-1' and 'E-2'), the Booking of Arrest and Arrest Report (Exhs. 'F' and 'F-1'), the Affidavit of Arrest (Exhs. 'G' and 'G-1'), and he also prepared a referral letter dated August 16, 1992 (Exhs. 'H' and 'H-1'). Thereafter, accused Baydo was transferred from detention cell of the Crimes against Persons Division to the Manila City Jail.

"Upon the otherhand (sic), the accused offered his testimony and that of his co-accused George Navarro, together with Exhibits '1' to '4' including its submarkings.

"This is the version of the accused -

"GEORGE NAVARRO testified that on June 14, 1992 at about 5:00 o' clock in the afternoon, he together with Lino Salandanan shot Leonardo Punongbayan; they planned the killing because of the money from 'shabu'; he and Salandanan were carrying a .45 caliber; Leonardo Punongbayan was seated at the sidewalk when they passed him at the back and fired the shots; Salandanan died on June 13, 1993; he does (sic) not know Bienvenido Baydo and he was surprised to learn that Baydo was implicated in this case; on December

16, 1992 he had pleaded guilty in this case without knowing that a similar case against Bienvenido Baydo is (sic) pending before this Court; he only met accused Baydo for the first time in Court and he is (sic) detained at Brigade 4 while Baydo is (sic) detained at Brigade 8 prior to the latter's transfer to Bicutan Jail.

"BIENVENIDO BAYDO testified that about 5:00 o' clock in the afternoon of June 14, 1990 he was resting inside their house at Onyx Avenue near the corner of Diamante Street or about 15 to 20 meters from the crime scene when he heard shots and went out to know what happened; he came to know that Leonardo Punongbayan was shot; there were plenty of people; Punongbayan's relative brought the victim to the hospital; he just take (sic) a look and went back to his house, he doesn't (sic) know who shot the victim and on June 16 or 17, 1990, he learned in the neighborhood that he is (sic) being accused of shooting Leonardo Punongbayan; on June 17, 1992, he went to Laguna to stay with his relatives because he fears (sic) for his life; since he is (sic) afraid that policeman (sic) might kill him because, aside from this case, he was also implicated in the Visconde (sic) Massacre, he talked to a friend journalist for his surrender to Ruther Batuigas on August 14, 1992; he is a kumpadre of Punongbayan's elder brother and he used to lend money to the victim; the victim's family still has unsettled debts amounting to P4,000.00 but he doesn't (sic) collect the same; when George Navarro pleaded guilty he just arrived from Branch 3 and they did not talk since they do (sic) not know each other and they belong to a different brigade (sic) at the City Jail; although he was close to the family of the deceased, he did not attend the wake or talk to the relatives of the victim; when the case was already in Court, the victim's relatives asked him to settle the case for P100,000.00."

The Issues

Appellant Baydo interposes the following errors allegedly committed by the trial court, to wit:[9]

"I

The trial court erred in rejecting the accused (sic) defense of alibi and in giving probative value to the testimonies of the prosecution witnesses.

"II

The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of murder as charged in the Information despite the apparent failure of the prosecution to prove the qualifying circumstances of treachery and evident premeditation."

The Court's Ruling

We deny the appeal.

First Issue: Defense of Alibi

Appellant Baydo contends that the trial court was "judgmental" when it frowned upon his defense of alibi in disregard of the constitutional presumption of innocence.[10] According to appellant, "(a)ssuming arguendo that there was no physical impossibility for the accused to be present at the scene of the crime, there was still need for the prosecution to have proved (sic) its case beyond reasonable doubt."[11]

Appellant's argument has no merit. Appellant does not mention any error allegedly committed by the trial court which can be considered violative of his right to be presumed innocent. He does not point to any piece of evidence - testimonial or otherwise - that can even remotely indicate, much less prove, any such violation.

Appellant merely parrots various legal doctrines in regard to the defense of alibi but fails to convince this Court. He testified that the house where he allegedly stayed in was only 15 to 20 meters away from the place of the incident.[12] This distance is too insignificant and utterly insufficient to rule out his participation in the crime.

The defense of alibi will prosper only if it can be shown that it was physically impossible for the accused to be at the locus criminis at the time of its commission. It cannot be seriously considered where it is possible to postulate the presence of the accused at the crime scene,[13] particularly where the prosecution has established his actual participation in the killing and where his identity has been clearly established.[14]

Indeed, the transcript of stenographic notes yields convincing evidence that appellant was positively identified by the two prosecution eyewitnesses as a co-principal of George Navarro alias “Boy Hapon” in the killing of Leonardo Punongbayan. Rosito Punongbayan, nephew of the deceased, clearly affirmed appellant’s presence and participation in the killing: [15]

Q What more, if any, that you saw?

A When I was going out of our house, I heard another shot and that shot hit the chest of my uncle.

Q Do you know where that shot came from?

A The shot came supposedly from his back, but when he turned, that was the time he was hit at the chest, Ma’am.

Q Do you know who shot your uncle?

A Yes, Ma’am, it was George Navarro alias Boy Hapon and Bienvenido Baydo (witness pointing to accused Bienvenido Baydo who is present inside the courtroom).

COURT:

Q Why are you sure that Bienvenido Baydo was one of the accused who shot your uncle?

WITNESS:

A I knew him very well since I was small, Your Honor.

PROS. BANDAL:

Q You said that Bienvenido Baydo shot your uncle, with (sic) what weapon did he use?

WITNESS:

A It was a .38 caliber, Ma’am.

Q How many times was your uncle hit ...?

A Three (3) shots were fired: two (2) gunshot wounds on the chest and one at the left thigh, Ma’am.

Q How many shots were fired by Bienvenido Baydo directed at your uncle?

A Two (2) shots were fired directly by Bienvenido Baydo.

Q Where did the other shot hit Leonardo Punongbayan, the victim.

A Two shots hit the chest, Ma’am.

Q How far were you from where the accused, Bienvenido Baydo, was when you saw him shot (sic) your uncle?

A It’s just near. It’s about 6 meters, more or less.”

The testimony of the widow of the deceased, Evelyn Punongbayan, corroborates the testimony of Rosito. She testified:[16]

“Q Who shot your husband?

A First it was George Navarro then ‘hindi siya napuruhan’ then Bienvenido Baydo shot him.

Q On what part of his body was he hit by George Navarro?

A He first fired a shot on the thigh then to the stomach (sic) then direct to the chest.

Q What part of the body of your husband was hot (sic) by accused Bienvenido Baydo?

A To the heart, ma'am.

Q What did you do?

A I was running but I realized I am (sic) not moving because of nervousness."

From the foregoing, it is clear that the conviction of the accused was based not really on the weakness of his defense of alibi, but more on the strength of his positive identification as one of the culprits by two credible prosecution eyewitnesses.

Further, appellant has not shown in any satisfactory degree that these witnesses were impelled to testify against him by reason of false or ill motives. Basic is the presumption in this jurisdiction that witnesses are not actuated by any improper motive absent any proof to the contrary, and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence.[17] Practically negating any ill motive on the part of the widow of the deceased, appellant testified that he used to lend money to the family of the deceased and that he even had an outstanding collectible of P4,000.00.[18]

Second Issue: Qualifying Circumstances of Treachery and Evident Premeditation

Appellant contends that contrary to the allegations in the Information, the lower court in its assailed Decision "failed to justify treachery and evident premeditation as qualifying circumstances." [19]

On the other hand, the Solicitor General, representing the People, contends that that the two alleged qualifying circumstances attended the commission of the crime. In support of his assertion of the presence of the qualifying circumstance of evident premeditation, the Solicitor General cites the testimony of Witness Navarro:[20]

Q You said that you were the one who shot this person by the name of Leonardo Punongbayan on June 14, 1992 more or less 5:00 o'clock in the afternoon, is that correct?

A No, sir, I was a companion.

COURT:

In other words, you were not the one who actually shot [him]?

A I was one of those who shot [him], sir.

Q In other words, you also shot the victim?

A I was one of those, your Honor.

ATTY. SANCHEZ:

You said you were one of the persons who shot the victim Leonardo Punongbayan, who actually shot Leonardo Punongbayan?

A It was Lino Salandanan who shot the victim, sir.

Q Before June 14, 1992, is (sic) there any plan to shoot Leonardo Punongbayan?

A We planned to kill him in order to get even of the money that was the fruit of a shabu.(sic)

Q You said you planned the killing of Leonardo Punongbayan together with this Lino Salandanan. On June 14, 1992 before 5:00 o'clock in the afternoon and before seeing Leonardo Punongbayan, were you and this Salandanan armed?

A Yes, sir, we were armed.

Q You, what firearm, if any, are (sic) you carrying at that time?

A I was carrying a .45 caliber, sir.

Q How about this Salandanan?

A He was also carrying a .45 caliber, sir.”

We agree with appellant that the qualifying circumstance of evident premeditation was not sufficiently proven in this case.

For evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements thereof, viz.: 1) the time when the offender determined to commit the crime; 2) an act manifestly indicating that he has clung to his determination; and 3) sufficient lapse of time between determination and execution to allow himself to reflect upon the consequences of his act.[21] These, however, were not established. True, one can deduce from the narration of George Navarro that the commission of the offense was planned and that, until its consummation, there was an inexorable resolve to kill Leonardo Punongbayan. It cannot be ignored, however, that Navarro was referring to Lino Salandanan as his accomplice. Nowhere was the name of appellant mentioned as a member of the group which planned the death of Leonardo. Although the evidence revealed that it was really appellant who cooperated with Navarro in the killing, the admission of Navarro regarding evident premeditation cannot be taken against appellant in the absence of proof of conspiracy. “The rights of a party cannot be prejudiced by an act, declaration, or omission of another”[22] except as otherwise provided in Sections 29 to 32 of Rule 130 of the Rules of Court. Besides, it does not follow that appellant was the one referred to as “Lino Salandanan” just because he actually cooperated with Navarro in the commission of the crime. No proof whatsoever was adduced by the prosecution that appellant was ever called “Lino Salandanan” or known by that name.

Treachery, on the other hand, was clearly proven. This qualifying circumstance may be appreciated when the following requisites are present: (1) the employment of means, method or manner of execution which will ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) deliberate or conscious adoption of such means, method, or manner of execution.[23] Rosito Punongbayan’s account of the perpetration of the attack on the deceased indubitably demonstrates treachery. Appellant and Navarro first shot the deceased at the back. When the deceased turned around, he was shot at the left thigh by Navarro. Thereafter, appellant rendered the coup de grace by shooting the deceased at the chest twice.[24] In corroboration, Witness Evelyn Punongbayan testified:[25]

PROSECUTOR BANDAL:

q And what was your husband doing with Ole at that time?

a They were just talking with each other.

q Now, while your husband and Ole were talking, what happened next?

a We suddenly heard a gun shot.

q When you said ‘we’, whom are (sic) you referring to?

a The one I am (sic) talking with because we were just across the street.

q What is (sic) the name?

a Aling Maria, ma’am.

q And when you heard a shot, what did you do?

a When I looked back I saw my husband in a kneeling position pleading but then they shot him again at the stomach and near the heart/chest.

q What did you hear?

a And I heard somebody said ‘Pare tapusin mo na yan.’

Q Who said that?

A It was Bienvenido Baydo.

COURT:

To whom was it addressed?

A To Goerge (sic) Navarro.

PROS. ANDAL:

And what happened after that?

A My husband was (sic) slumped on the pavement.

Q Have you seen your husband shot?

A Yes, ma'm."

Upon the facts established by the prosecution, we agree with the trial court that the attack on the unarmed Leonardo Punongbayan was sudden and unexpected, without the slightest provocation on his part.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. The crime was committed on June 14, 1992 prior to the effectivity of RA 7659, which imposed the death penalty on certain heinous crimes.[26] There being no aggravating or mitigating circumstance, the penalty should be imposed in its medium period,[27] i.e., the indivisible penalty of reclusion perpetua.[28]

In line with current jurisprudence,[29] the civil indemnity of P50,000.00 is retained. The award of moral damages, however, is deleted. Moral damages may be recovered in criminal offenses,[30] but there must be a factual basis therefor. While the assailed Decision awarded the sum of P70,000.00 as moral damages, it appears that this was based only on the widow's bare assertion of moral sufferings.[31] Having exhaustively examined the records, we find no factual basis for the award.[32]

WHEREFORE, premises considered, the Decision is hereby AFFIRMED except that the award of moral damages is DELETED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., and Melo JJ., concur.

Francisco, J., on Leave.

[1] Article 2217 of the Civil Code.

[2] Docketed as Criminal Case No. 92-109361.

[3] Original Records, p.1; rollo, p.7.

[4] On December 16, 1992, George Navarro alias "Boy Hapon" pleaded guilty to the lesser offense of homicide (rollo, p. 60).

[5] Original Records, p. 23.

[6] Presided by Judge Benito C. Se, Jr.

[7] Rollo, p. 21.

[8] Ibid., pp. 16-19.

[9] Rollo, p. 33; original text in upper case.

[10] Ibid., p. 40.

[11] Ibid., p. 41.

[12] TSN, September 16, 1993, pp. 24-25.

[13] *People vs. Bracamonte*, 257 SCRA 380, 384, June 17, 1996.

[14] *People vs. Compedio, Jr.*, 258 SCRA 254, 263-264, July 5, 1996; *People vs. Alimon*, 257 SCRA 658, 677, June 28, 1996; *People vs. Alberca*, 257 SCRA 613, 630, June 26, 1996; *People vs. Echegaray*, 257 SCRA 561, 574, June 25, 1996; *People vs. Bracamonte*, 257 SCRA 380, 393, June 17, 1996; *People vs. Pano*, 257 SCRA 274, 282, June 5, 1996; *People vs. Paragua*, 257 SCRA 118, 122-123, May 24, 1996.

[15] TSN, January 14, 1993, pp. 3-4.

[16] TSN, March 31, 1993, p. 7.

[17] *People vs. Salvatierra*, 257 SCRA 489, 501-502, June 20, 1996, citing *People vs. Villafuerte*, 232 SCRA 225, May 6, 1994 and *People vs. Genobia*, 234 SCRA 699, August 3, 1994.

[18] TSN, September 16, 1993, p. 17.

[19] Rollo, p. 42.

[20] Ibid., pp. 73-75; citations omitted.

[21] *People vs. Halili*, 245 SCRA 340, 352, June 27, 1995.

[22] Section 28, Rule 130 of the Rules of Court.

[23] *People vs. Vallador*, 257 SCRA 515, 527, June 20, 1996 citing *People vs. Mendoza*, 236 SCRA 666, September 22, 1964.

[24] TSN, January 14, 1993, pp. 3-4.

[25] TSN, March 31, 1993, pp. 6-7.

[26] RA 7659, otherwise known as An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes, took effect on December 31, 1993 (*People vs. Simon*, 234 SCRA 555, 569, July 29, 1994).

[27] Paragraph 1, Article 64 of the Revised Penal Code.

[28] Although Section 17 of RA 7659 fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, it was held in *People vs. Lucas* (240 SCRA 66, 69, January 9, 1995) that there was no clear legislative intent to alter its original classification as an indivisible penalty.

[29] *People vs. Evangelista*, 256 SCRA 611, 628, May 8, 1996; *People vs. Torrefiel*, 256 SCRA 369, 379, April 18, 1996; *People vs. Caritativo*, 256 SCRA 1, 14, April 1, 1996.

[30] Article 2219 (1), Civil Code of the Philippines. See also Article 2217, Civil Code of the Philippines, and *People vs. Aliviado*, 247 SCRA 300, August 14, 1995.

[31] Rollo, p. 17.

[32] *People vs. Patrolla, Jr.*, 254 SCRA 467, 477, March 7, 1996.

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