

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CATALINO FABRIGAS, JR. AND RAFAEL FABRIGAS, DEFENDANTS-APPELLANTS.

G.R. No. 115005. September 05, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision in Criminal Case No. 10099 of the Regional Trial Court of Palawan, Branch 49 in Puerto Princesa,[1] dated September 16, 1993 finding brothers Catalino Fabrigas, Jr. and Rafael Fabrigas guilty beyond reasonable doubt of the crime of murder for the killing of Ernesto Bron. The trial court held as follows:

WHEREFORE, premises considered, the Court found and so finds accused Catalino Fabrigas, Jr. and Rafael Fabrigas GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and sentences each and every accused to RECLUSION PERPETUA, with all the accessories provided by law, to indemnify the heirs the amount of Two Hundred Thousand (P200,000) Pesos as expected income, Fifty Thousand (P50,000) Pesos as moral damages and Thirty-Five Thousand (P35,000) Pesos as actual damages and to pay the costs.

SO ORDERED.[2]

The information filed against the accused read:

That on or about the 1st day of January, 1992, more or less 3:30 o'clock A.M. at Sitio Little Caramay, Barangay Magara, in the Municipality of Roxas, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the said accused with evident premeditation and treachery, armed with a bladed weapon and with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault and stab with their bladed weapon to wit: a bolo, one Ernesto Bron hitting him in the vital part of his body and inflicting upon him the following injuries:

1. Stab wound penetrating left side of his chest and injuring his lungs;
2. Stab wound on the left side of the mid-scapular area;
3. Stab wound on the back, left side;
4. Lacerated wound on his right hand.

which injuries produces (sic) cardiac tamponade and hypovolemic shock which were the direct and immediate cause of his death.

CONTRARY TO LAW and committed with aggravating circumstances of treachery and with the use of superior strength.[3]

Both Catalino, Jr. and Rafael Fabrigas pleaded not guilty to the crime charged.

The prosecution established the following facts:

Victim Ernesto Bron's brother owned a parcel of land in Sitio Caibanan, over which he had a dispute with

Reynaldo Fabrigas. Upon his brother's death, Ernesto took over the land, and later referred the matter of the dispute for settlement to the authorities in their purok.[4] When they could not arrive at a settlement, Ernesto and Reynaldo executed a handwritten letter-agreement referring the matter to the barangay captain.[5]

At about 3:30 in the morning of January 1, 1992, Ernesto and his wife Belinda were awakened by someone calling out Ernesto's name from the balcony of their house in Magara II, Caramay, Roxas, Palawan. Prompted by such call, Ernesto went out, followed two meters behind by Belinda, who brought with her a lit unshielded kerosene lamp.

The callers turned out to be Reynaldo Fabrigas' brothers, herein appellants Catalino, Jr. and Rafael. Rafael was carrying a bolo while Catalino, Jr. had an identical bolo slung over his shoulder. Ernesto inquired why they were calling him. Catalino, Jr. answered that they wanted to ask for a settlement of the land dispute because it was the New Year.[6] Ernesto and Catalino, Jr. shook hands. Instead of releasing Ernesto's hand, Catalino, Jr. grabbed Ernesto's other hand and held them tightly, while Rafael stabbed Ernesto, wounding his left hand. As Ernesto struggled to free himself from Catalino, Jr.'s hold, the two men fell on the floor. Rafael then took hold of Ernesto's left arm and, together with Catalino, Jr., pulled Ernesto downstairs and dragged him to a distance of about three meters from the house.[7]

As Ernesto was being held by Catalino, Jr., Rafael clubbed him below his knee with a three-foot piece of firewood which Rafael had picked up in the area.[8] The brothers then dragged Ernesto towards the road where Rafael stabbed Ernesto at the buttocks while the latter's right hand was still being held by Catalino, Jr. Ernesto continued struggling until Catalino, Jr. plunged a knife at Ernesto's left chest causing Ernesto to fall prone on the ground. The brothers then left Ernesto.[9]

The Brons' neighbor, Leopoldo de la Cruz, who lived some eight meters away, was awakened by Belinda's screams and the barking of dogs. He immediately got his flashlight and went towards the direction of the Brons' house. On the way there, he met the running Fabrigas brothers at whose faces he beamed the flashlight.[10]

Upon reaching the Brons' house, Leopoldo was asked by Belinda to look for a conveyance so that Ernesto could be brought to the hospital. As Belinda was helping Ernesto get inside the house, Ernesto said, "You Fabrigas, you are traitor (sic)."[11] Before he could be brought to the hospital, Ernesto died.[12]

Belinda's brother-in-law, Leodevico delos Reyes, informed the police about the incident. Policemen arrived at the scene around twelve noon of January 1, 1992. Belinda gave the police the names of the assailants through "signals" because she had lost her voice.[13] She found a bolo handle[14] with bloodstains, fifteen meters away from their house and prohibited everyone from touching it. The police picked it up.[15] Because there was no doctor in Roxas, no autopsy could be conducted on the body of the victim before burial. [16]

The victim's body was exhumed on January 7, 1992 for autopsy. Dr. Leo Salvino, the rural health physician of Roxas, examined the body, which was already in an advanced state of decomposition. He found the following wounds: a stab wound which entered the chest, severed the aorta, with an exit wound at the mid-scapular area, and another stab wound at the left buttock. The body also bore a laceration on the right hand. Dr. Salvino indicated the cause of the victim's death as "cardiac tamponade and hypovolemic shock due to stab wound."[17] He opined that the wounds could have been caused by a bolo because a knife "could hardly penetrate the interior of the chest.[18]

The incident left Belinda a widow with two children ages six and four years. She asserted that her husband, who was a farmer, earned P10,000 per harvest. She claimed that she spent P35,000 for the funeral and wake and P15,000 for the exhumation.[19]

In the trial court, the defendants interposed alibi as their defense. With his helper Willy Tabi corroborating appellant Catalino, Jr.'s testimony, the defense alleged that it was physically impossible for herein appellants to have been at the scene of the crime. Sitio Kaybulusan (or Caibulusan), where the crime took place, was five to seven kilometers away from the residence of Catalino in Sitio Caramay.[20] Rough roads and rolling hills separated the two sitios. Because there was no means of transportation between the two places, the distance could be negotiated only on foot, in more or less three hours.[21]

Catalino, Jr. lived with his wife and three children. His brother, Rafael, who was a widower, and his two daughters, lived nearby. Catalino, Jr. testified that on December 31, 1991, Rafael's family spent the night in his house for *noche buena*. With them were Willy Tabi and Nilo Abrina. Willy Tabi claimed that he woke up at dawn on January 1, 1992. Catalino, Jr. and Rafael were still in the house. He asserted that Catalino, Jr. and Rafael could not have left the house because they were sleeping soundly.[22] They all went to bed at around one o'clock in the morning of January 1, 1992. Catalino, Jr. slept with his family and Rafael's children in the only room in the house while Rafael slept near the kitchen with Willy and Nilo. Catalino, Jr. woke up on January 1, 1992 when it was "twilight already." Rafael was still at Catalino's house then.[23]

Willy Tabi testified that he spent four days, beginning December 30, 1991, at Catalino, Jr.'s house. He gathered coffee for the latter.[24] Between midnight of December 31, 1991 and early morning of January 1, 1992, he partook of *suman* and *pansit* with Catalino, Jr.'s family.

The trial court convicted the two Fabrigas brothers of the crime of murder, giving no credence to their defense, in view of their positive identification as the perpetrators of the crime by Belinda Bron and Leopoldo dela Cruz. Furthermore, the trial court found that appellants' house was a mere three to five kilometers from the Brons' house.

Appellants contend in this appeal that the trial court erred:(a) in giving credence to the "inconsistent and biased testimony" of Belinda Bron and (b) in convicting them despite the failure of the prosecution to prove their guilt beyond reasonable doubt.[25]

Appellants argue that the trial court disregarded the constitutional presumption of innocence of the accused when it gave credence to the testimony of Belinda Bron, by accepting her version of the commission of the crime "hook, line and sinker, despite discrepancies and improbabilities." [26]

Appellants find it unnatural as recounted by Belinda, for the victim to have gone out of his house upon hearing his name called, to have engaged in conversation with the callers and to have not gone inside the house upon realizing who they were.[27]

We find nothing unnatural about the victim's having received appellant's cordially. Appellant Catalino, Jr. himself admitted that he had no quarrel or misunderstanding with the victim.[28] And, early in their conversation with the victim outside the house, appellants expressed their intention to settle their differences on account of the New Year. It was, therefore, but natural for the victim to have shaken hands with Catalino, Jr. in acceptance of his conciliatory gesture.

As the trial court expounded:

It is a custom among Filipinos to celebrate New Year's Eve with their family to welcome the coming year with the hope the New Year will be peaceful and prosperous. Ernesto Bron and his wife with two daughters were then sleeping in the house at Sitio Kaybulusan, Roxas, Palawan. They were awakened in their deep slumber by two uninvited guests who pretended to forgive and forget their differences. The victim thinking that indeed the two unwelcome guests were sincere in their desire to start the New Year at peace with each other, opened his door to welcome the two guests. His wife Belinda was the one bringing a gas lamp and

recognized the guests for they were already in their balcony about two meters away. They declared their purpose and wanted to settle their differences. They shook hands. The victim then was with the idea that indeed they will settle their conflicts and extended his hand to make peace with the two. It was in this act that accused held tight the hands of the victim and Rafael Fabrigas stabbed him.

The two accused planned to eliminate the victim by pretending to settle their differences. The deceased had the belief that in the spirit of New Year, it is indeed for his welfare to have peace and reconciliation. It is said that to err is human and to forgive is divine not knowing that the agents of darkness were in the midst to cut short his earthly life.

Appellants further assert that if Belinda's story on how the assault was perpetrated were to be believed, her husband would have ended up "leaking like a sieve with wounds in several places of his body." [29] They were referring to her testimony that after the brother dragged her husband from the house to the road, Rafael continuously stabbed her husband while being held by Catalino, Jr.

The use of the word "continuously" by Belinda in describing the number of knife thrusts may appear to be not wholly consistent with the findings indicated in the exhumation report showing only two fatal wounds on the victim. This does not, however, affect Belinda's credibility. Witnesses are not expected to have a perfectly recorded memory of an incident. As aptly put by the Solicitor General, "the most honest lapses do not necessarily impair (a witness') credibility specially when minor details are involved." [30] In this case, the inconsistency pointed out is minor. What is vital is that appellant saw the assault and identified appellants as the perpetrators thereof.

Indeed, discrepancies in minor details indicate veracity rather than prevarication. They tend to bolster the probative value of the testimony in question. [31] They enhance, rather than destroy, witness' credibility and the truthfulness of his testimony as they erase any suspicion of rehearsed testimony. [32]

Besides, it is probable that Rafael had in fact made several thrusts at the victim, but some may have been too short or off the mark because of some evasive movements of the victim, or in some instances the full swing of the bolo may have been aborted to avoid hitting Catalino who was holding the victim.

Appellants also aver that the trial court should have found something "strange about the production of (the) alleged murder weapon, Exh. A, consisting of a bolo handle," [33] asserting that Belinda should have explained how the bolo was separated from its handle.

Production of the weapon used in the commission of a crime is not a condition sine qua non for the proper discharge of the prosecution's burden of establishing by proof beyond reasonable doubt that a crime was committed and that the accused was the author thereof. [34] Even without producing the bolo or its handle, the prosecution could prove the crime by credible and positive testimonial evidence.

Appellants also insinuate that Belinda's "vague reference" to a land dispute between her husband and appellants' brother, Reynaldo Fabrigas, served only "to muddle an already confused effort" to ascribe a motive for the commission of the crime. They stress that the dispute was not between the victim and appellants, but between the victim's deceased brother and appellants' brother Reynaldo. [35]

Proof of motive was rendered unnecessary by the positive identification of the appellants as the perpetrators of the crime. [36] Thirty-year-old Belinda could not have been mistaken as to appellants' identity having known them for twenty years or since she was a child of ten years. [37] Belinda held a kerosene lamp barely two meters away from appellants in the balcony of their house. Moreover, Belinda's identification of the appellants was corroborated by her neighbor, Leopoldo de la Cruz, who beamed his flashlight on the faces of the appellants at a distance of three meters as they were running away from the crime scene. [38] This Court has held in a number of

cases that illumination produced by a kerosene lamp or a flashlight is sufficient to allow identification of a person.[39] When conditions of visibility are favorable, and the witness does not appear to be biased, his assertion as to the identity of the malefactor should normally be accepted.[40]

Neither may the fact that Belinda was the wife of the victim affect her credibility. There is no legal provision that disqualifies relatives of the victim of a crime from testifying, if they are competent.[41] Relationship of a witness to a party to a case does not, by itself, impair his or her credibility.[42] The rule is that in the absence of proof that a witness is moved by improper motive, it is presumed that he was not so moved and therefore, his testimony is entitled to full faith and credit.[43] That presumption not having been overcome in this case, Belinda's identification of the appellants as the killers of her husband stands. As a relative of the victim, her having pinpointed appellants was simply an act of serving justice otherwise, appellants would have gained undeserved immunity.[44]

As to appellants' defense of alibi, their positive identification as the perpetrators of the crime destroyed this defense.[45]

Furthermore, appellants' defense was inherently weak considering that appellant Catalino, Jr.'s testimony on the matter was supported by Willy Tabi, his own helper who was expected to testify in his favor. The accused's defense of alibi must be corroborated by a credible and disinterested witness.[46]

The trial court found that the crime was attended by treachery. Having been alleged in the information, treachery qualified the killing to murder. The assailants perpetrated the killing in such a manner that there was no risk to themselves arising from the defense which the victim might have made. The victim was unarmed. Treachery is present where the assailant stabbed the victim while the latter was grappling with another thus, rendering him practically helpless and unable to put up any defense.[47]

Treachery was also present through appellants' use of a ruse to get hold of their victim. On the pretext that they came to settle a disagreement on account of the New Year, the victim innocently received the offered hand of Catalino, Jr., who he thought had come in peace, only to find out too late that he and his brother Rafael had an evil intention.

Abuse of superior strength which was duly proven is a generic aggravating circumstance. However, because it formed part of the mode of attack, this circumstance is absorbed by treachery.[48]

Evident premeditation was not proven as there was no proof of planning and preparation to kill the victim or that the killing was the result of calculation, meditation or resolution on the part of the appellants.[49]

There was no proof of any mitigating circumstance to affect the penalty imposable upon the appellants.

In the absence of neither generic aggravating or mitigating circumstance, the penalty of reclusion temporal maximum to death provided for in Art. 248 of the Revised Penal Code must be imposed in its medium period[50] or reclusion perpetua.

The awards of expected income of P200,000 and actual damages of P35,000 were based by the trial court on the sole unsupported testimony of the widow of the victim.[51] To legally allow them, Belinda's claims should have been supported by receipts or other documents. As stated in *Dichoso v. Court of Appeals*,[52] cited in *People v. Wenceslao*: [53]

Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount

thereof (Dee Hua Liong Electrical Corporation v. Reyes, 145 SCRA 713, November 25, 1986).

WHEREFORE, the Decision of the trial court is hereby affirmed insofar as it finds appellants Catalino Fabrigas, Jr. and Rafael Fabrigas guilty beyond reasonable doubt of the crime of murder and imposes on each of them the penalty of reclusion perpetua. Appellants shall indemnify the heirs of Ernesto Bron in the amount of Fifty Thousand Pesos (P50,000) in accordance with jurisprudence.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug and Hermosisima Jr., JJ., concur.

[1] Presided by Judge Sabas R. Acosta.

[2] Rollo, pp. 29-30.

[3] Id., at 5-6.

[4] TSN, October 20, 1992, pp. 4-5.

[5] Exhibit E.

[6] TSN, October 19, 1992, p. 5.

[7] Id., at 6.

[8] See note 4 at p. 19.

[9] See note 6 at pp. 6-8.

[10] TSN, October 22, 1992, pp. 5 & 12-13.

[11] Id., at 14.

[12] Id., at 7; See note 6 at pp. 9-10.

[13] TSN, October 21, 1992, pp. 34-35.

[14] Exhibit A.

[15] See note 6 at p. 10; See note 4 at pp. 15-16.

[16] See note 13 at p. 30.

[17] Exhibit G.

[18] TSN, March 22, 1993, pp. 5-8.

[19] See note 6 at pp. 13-15.

[20] The sitios of Caibulusan and Caramay appears to be part of Little Caramay, Magara, Roxas, Palawan (TSN, October 20, 1992, pp. 2-3).

[21] TSN, August 19, 1993, pp. 4-5.

[22] TSN, May 6, 1993, pp. 3-8.

[23] See note 21 at pp. 3-9.

[24] See testimony of Willy Tabi, TSN, May 6, 1993.

- [25] Appellants' Brief, p.2.
- [26] Id., at 7.
- [27] See note 24 at p. 8.
- [28] See note 21 at p. 10.
- [29] See note 24 at p. 9.
- [30] Appellee's Brief, p. 106, citing *People v. Tidong*, 225 SCRA 324 (1993).
- [31] *People v. Macasa*, 229 SCRA 422 (1994).
- [32] *People v. Israel*, 231 SCRA 155 (1994).
- [33] See note 24 at p. 9.
- [34] *People v. Bello*, 237 SCRA 347 (1994) quoting *People v. Florida*, 1992, 214 SCRA 227 (1992).
- [35] See note 24 at p. 10.
- [36] *People v. Rodico*, 249 SCRA 309 (1995).
- [37] See note 6 at p. 3.
- [38] See note 10 at p. 13.
- [39] *People v. Amaro*, 235 SCRA 8 (1994) citing *People v. Penillos*, 205 SCRA 546 (1992) and *People v. Loste*, 210 SCRA 614 (1992).
- [40] *People v. Bongadillo*, 234 SCRA 233 (1994).
- [41] *People v. Pantamama*, 250 SCRA 603.
- [42] *People v. Sinatao*, 249 SCRA 554 (1995).
- [43] *People v. Lopez*, 249 SCRA 610 (1995).
- [44] See: *People v. Najaros*, 249 SCRA 99 (1987).
- [45] *People v. Lapuz*, 250 SCRA 250 (1995).
- [46] *People v. Calope*, 229 SCRA 413 (1994).
- [47] *People v. Lingatong*, 181 SCRA 424 (1990).
- [48] *People v. Francisco*, 249 SCRA 526 (1995).
- [49] *People v. Tamparong, Jr.*, 249 SCRA 584 (1995).
- [50] Art. 64(1), Revised Penal Code.
- [51] See Note 19.

[52] 192 SCRA 169 (1990).

[53] 212 SCRA 56 (1992).

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