

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILSON VILLANUEVA, ACCUSED-APPELLANT.

G.R. No. 116610. December 02, 1996

Ponente: VITUG, J.

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VITUG, J.:

The stabbing of Felix Tañola during a benefit dance held on the night of 16 April 1989 resulted in his instantaneous death. The accused, Wilson Villanueva, was pointed to by witnesses as being the culprit. In an information, dated 22 August 1989, Villanueva was charged with the crime of murder; thus:

"The undersigned 2nd Assistant Provincial Prosecutor accuses WILSON VILLANUEVA, of the crime of MURDER, committed as follows:

"That on April 16, 1989, at about 11:00 o'clock in the evening at barangay Malubo, Municipality of Mahayag, Province of Zamboanga del Sur, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill with treachery and evident premeditation, while armed with a hunting knife, did then and there wilfully, unlawfully and feloniously stab one Felix Tañola inflicting upon him mortal stab wounds on the different parts of his body which caused his instantaneous death.

"CONTRARY TO ARTICLE 248 of the Revised Penal Code with the aggravating circumstance of nighttime which was specifically sought by the accused to facilitate the commission of the offense."[1]

At his arraignment, the accused pleaded "not guilty" to the charge; thereafter, trial proceeded.

After evaluating the evidence respectively tendered by the prosecution and the defense during the trial, Judge Camilo E. Tamin of the Regional Trial Court of Zamboanga del Sur, Branch 23, on 20 June 1994, rendered a judgment of conviction. Judge Tamin held:

"WHEREFORE, on the basis of the evidences submitted, this court finds the accused GUILTY beyond reasonable doubt of the crime of murder qualified by treachery and evident premeditation and hereby sentences him-

"1) To an imprisonment of reclusion perpetua; and

"2) To indemnify the heirs of the deceased in the sum of P50,000.00.

"SO ORDERED."[2]

Disagreeing with the trial court's appreciation of the evidence, accused Wilson Villanueva interposed this appeal. He assigned these "errors:"

"1

"THE TRIAL COURT ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS ARCELI DANGASE.

"2

"THE TRIAL COURT ERRED IN DECLARING THAT TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT AS TO QUALIFY THE CRIME TO MURDER."[3]

The evidence for the prosecution consisted of the declarations at the witness stand of Arceli Dangase, Francisco Gumula, Diosdado Regañon and Jeffrey Artiaga. The defense proffered the testimony of Federico Campuso and that of appellant himself.

The actual scenario, from the view of the trial court, is that depicted, albeit briefly, in the decision appealed from; viz:

"Reconstructing the sequence of events in the evening of April 16, 1989 at Malubo Mahayag, Zamboanga del Sur, the court is morally convinced of the occurrence of the following set of facts; that the accused was standing outside the dancing hall immediately before the stabbing incident; that when the deceased Felix Tañola went out of the dancing hall to urinate, he was followed by the accused; that the deceased returned with blood all over about him and the accused ran away; that the accused voluntarily surrendered to CAFGU Francisco Gumula at the latter's residence in Malubo in the afternoon of April 17, 1989 and confessed to the killing of Felix Tañola."[4]

The trial court, in fine, gave credence to the testimony of eyewitness Arceli Dangase that -

"x x x in the evening of April 16, 1989, she was tending her store a short distance from the benefit dance being then held at the market place of Malubo, Mahayag, Zamboanga del Sur, that Felix Tañola had an argument with accused Wilson Villanueva that evening; that the accused was standing outside the dancing hall, and when Felix Tañola went out to urinate, she saw the accused followed Felix Tañola; that when Felix returned, his breast was already full of blood; that she shouted that Felix was stabbed and pointed to the accused who then run away."[5]

Impressed with Arceli, the trial court observed that her -

"x x x demeanor and testimony in court were natural and unaffected. She had no reason to testify falsely against the accused. To the contrary, immediately after she testified, the said witness talked to the accused inside the courtroom crying. The court therefore has no doubt of the sincerity and veracity of the testimony of said witness."[6]

Appellant denied the criminal imputation against him. He testified that he was at the dance hall with a lady partner (whose name, strangely, he could not remember) when the stabbing incident occurred. He was later arrested at home without any warrant. He assailed the credibility of the prosecution witnesses. In the case particularly of eyewitness Arceli Dangase, he asseverated that her testimony was full of inconsistencies.

The Court has examined the records, and it is satisfied that the court a quo has been more than judicious in giving credit to Arceli's testimony.

Arceli gave this eyewitness account of the stabbing incident:

"Q-

That is what you firmly believe that Wilson Villanueva stabbed Felix because he ran away?

"A-

It was Wilson who stabbed Felix because I saw him and after he stabbed Felix he ran, but it is very risky to pinpoint him, but it was Wilson and he ran afterwards.

"Q-

Now, how did Wilson Villanueva stab Felix Tanyola

"A-

He was holding the knife and stabbed Felix.

"Q-

Will you please demonstrate?

"INTERPRETER:

"The witness demonstrated the man who stabbed was holding it on his right hand and demonstrated the act of stabbing the breast of Felix Tanyola and then afterwards he ran.

"Q-

So that your answer in number 6 which you said that you did not actually see is wrong.

"FISCAL CAGOCO:

"Misleading, Your Honor, the answer never categorical state that she did not see the actual stabbing, Your Honor.

"ATTY. TECSON:

."Yes, she did not see the actual stabbing what she saw is she was already surprised why Wilson ran away and what was really she saw is that Felix Tanyola was already holding his breast that was what she say.

"COURT:

."The affidavit does not state that she did not see. But that is your conclusion.

"ATTY. TECSON:

"Now, it is very clear that he just only saw Felix while he was holding his breast.

"COURT:

"In the affidavit there is no statement that she did not see.

"ATTY. TECSON:

"She did not actually state also that she actually saw the stabbing, Your Honor.

"COURT:

"Let it be noted in the record that in her affidavit she did not state categorically that she saw or she did not see the actual stabbing."[7]

On the question of whether Arceli had a companion or was alone tending the store when she saw the stabbing incident, she explained:

"Q-

And you do not have companions in tending your store?

"A-

I was there sitted (sic.).

"Q-

The question is do you have any companions?

"A-

I have no companion, it was only Jaime Dangase who was near me and it was then that I saw Wilson stabbed and I shouted help.

"Q-

Do you mean that Jaime Dangase, the one who testify in this case.

"A-

Yes, Sir, because he was near me and I shouted for help.

"Q-

And at that time, you were conversing with Jaime?

"A-

Yes, sir, because he was near me and I shouted for help because Felix Tanyola was stabbed.

"Q-

But Wilson Villanueva and Felix Tanyola as you have stated were standing besides each other?

"A-

Yes, sir, because he was the one who was standing next to Felix and when I saw that Felix was already blooded he ran and I shouted for help because Felix was stabbed.

"Q-

But aside from Wilson Villanueva, there were also many people around them?

"A-

There were no persons around them, it was only after Felix was stabbed that there were persons who surrounded us."[8]

Then, on whether appellant stabbed Tañola while the two were at or near the dance hall or while Tañola was urinating, she testified:

"Q-

So that at the beginning of the benefit dance your attention was only focused to Felix and Wilson Villanueva?

"A-

It is benefit dance but when Felix went out to urinate Wilson followed him and I noticed that when he came back he was already blooded and stabbed, so I shouted to help him because he was stabbed.

"Q-

But you said in your affidavit that Wilson Villanueva was only standing and now you said that Villanueva went out, which is now is correct?

"A-

Wilson was standing outside but when Felix went out he followed from the dance hall and it was then that I shouted for others to help Felix because he was stabbed, I've even pointed him when Wilson ran away and it was on the following day that he surrendered."[9]

The testimony would sufficiently convey that when Tañola left the dance hall to urinate, Wilson followed and, in an instant, stabbed him.

The fact that the affidavit she has executed is deficient in some respects should be of no real moment. The discrepancy between statements of the affiant in an affidavit and those made on the witness stand is not necessarily a cause for discrediting a witness. Ex-parte affidavits are generally incomplete,[10] and they do not purport to contain a complete compendium of the details of the event narrated by them.[11] There is no rule that would estop an affiant for making an elaboration of an affidavit during the trial.[12]

At any rate, the issue on which witness to believe is one that should be best addressed by a trial, rather than by an appellate court. Findings of fact of a trial judge are accorded great respect and are seldom disturbed on appeal. The rationale is explained in *People vs. Yadao*: [13]

"This Court accords respect to the factual findings of the trial judge, who has the opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies. The witnesses reveal much when they testify that is not reflected in the transcript, which only records what they said but not how they said it. The meaningful pause, the ready reply, the angry denial, the elusive eyes or the forthright stare, the sudden pallor when a lie is exposed or the flush of face that accentuates a sincere assertion-these and many other tell-tale marks of honesty or invention are not lost on the trial judge. It is for this reason that his factual findings are generally not disturbed by the appellate court unless they are found to be clearly biased or arbitrary. They are not so in the case at bar." [14]

Appellant contends that the trial court has erroneously appreciated treachery and evident premeditation in the commission of the crime.

The Court agrees.

For qualifying circumstance of treachery to be considered, it must be clear that the accused has deliberately and consciously adopted means of execution that render the person attacked with no opportunity to defend himself or to retaliate.[15] Treachery is not presumed; it has to be proved as convincingly as the killing itself.[16]

There would appear to be no substantial evidence showing that the killing was done in a treacherous manner. In fact, the prosecution's evidence itself would indicate that appellant and the victim had some kind of argument immediately prior to the stabbing.[17] Arceli Dangase stated that when she first gazed at appellant and the victim, the two were standing "side by side," and when "the victim went out to urinate, appellant followed him and stabbed him." She next found herself staring at the victim holding his bloodied breast and appellant starting to run away from the scene. Absent any evidence of a treacherous attack, the accused should be given the benefit of the doubt.[18]

Relative to the qualifying circumstance of evident premeditation, even the Solicitor General agrees that his circumstance has been incorrectly taken into account by the trial court. Evident premeditation exists when the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. It stages are: (1) the time when the offender has 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 the accused to

reflect upon the consequences of his act.[19]

In the case at bar, it just so happened, it would seem, that appellant and the victim saw each other at the dance hall and later had an argument. No evidence was shown that appellant had any previous plan to kill the victim. Like treachery, evident premeditation should be established by clear and positive evidence. Mere presumptions and inferences, no matter how logical and probable they might be, would not be enough.[20]

Nighttime, alleged in the information, is an aggravating circumstance only when it is purposely sought by the offender. It does not appear to be the case at all in this instance.

Considering that both qualifying circumstances of treachery and evident premeditation, alleged as such in the information, have not been properly established, appellant can only be held guilty of homicide. The penalty of this offense is reclusion temporal which, in this case, must be applied in its medium period there being neither aggravating nor mitigating circumstance in the commission of the crime. Applying the Indeterminate Sentence Law, the entire range of the imposable penalty must then be, as MINIMUM, anywhere within the range of prision mayor and, as MAXIMUM, anywhere within the duration of reclusion temporal, medium.

WHEREFORE, the decision appealed from is MODIFIED by declaring appellant to be guilty only of the crime of HOMICIDE and his penalty is thus reduced to, from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. The rest of the decision is AFFIRMED. Cost against accused-appellant.

SO ORDERED

Padilla, Bellosillo, and Hermosisima, Jr., JJ., concur.

Kapunan, J., on leave.

[1] Rollo, pp. 3-4.

[2] Rollo, p. 18.

[3] Appellant's Brief, p. 1.

[4] Rollo, p. 17.

[5] Rollo, p. 14.

[6] Rollo, p. 17.

[7] TSN, 07 November 1990, pp. 10-12.

[8] Ibid., pp. 9-10.

[9] Ibid., p. 15.

[10] People vs. Sarellana, 233 SCRA 31.

[11] People vs. Gabas, 233 SCRA 77.

[12] People vs. Gabas, supra.

[13] 216 SCRA 1.

[14] At p. 7.

[15] *People vs. Verchez*, 233 SCRA 174.

[16] *People vs. Cedenio*, 233 SCRA 356.

[17] TSN, 07 November 1990, pp. 3-15.

[18] *People vs. Apa-ap, Jr.*, 235 SCRA 468.

[19] *People vs. Pandiano*, 232 SCRA 619.

[20] *People vs. Pastoral*, 226 SCRA 219; *People vs. Buka*, 205 SCRA 567.

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