

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NEMESIO BALANO AND MORENO ALMENIANA,
ACCUSED-APPELLANTS.**

G.R. No. 116721. May 29, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the decision[1] dated February 7, 1994, of the Regional Trial Court of Iloilo City, Branch 24,[2] in Criminal Case No. 36513, convicting accused-appellants Nemesio Balano and Moreno Almeniana of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim Allan Ardonio, jointly and severally, the amount of P40,000.00 as burial and funeral expenses, P50,000.00 as compensatory damages, and P20,000.00 as moral damages and to pay the costs.[3]

The accused-apellants, together with Pama, Basulgan, Moreno, and Sologastua, were charged with the crime of murder before the trial court in an information[4] which reads.

"That on or about April 4, 1991, in the Municipality of Lemery, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms of unknown caliber, conspiring, confederating, and mutually helping one another and with a deliberate purpose to kill, taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, beat and shoot Allan Ardonio inflicting upon him gunshot wounds on the head and other injuries on the various parts of his body, thereby causing his death."

The records of the case show the following facts:

On April 3, 1991, a coronation and public dance was held at Barangay Northwest Zone, Lemery, Province of Iloilo to celebrate the barangay fiesta. At around 11:00 o'clock on said date, a fistfight in the dance hall ensued between Allan Ardonio and Emmanuel "Eiman" Balano. The fight arose when a certain Nenita Elisana, who was then sitting next to Allan, rejected Eiman's request for a dance. Eiman allegedly approached Allan and hit him. In turn, the latter retaliated by hitting the former in the back and causing him to fall down. They were pacified by observers who brought them before then Lemery Police Chief, accused-appellant Nemesio Balano who eventually settled the conflict. Nemesio was then also in the dance hall, with his co-accused-appellant Moreno Almeniana, and Noli Pama, Igmedio Basulgan, Danilo Moreno, and Arnold Sologastua, all members of the police force and Citizen Armed Forces Geographical Units (CAFGU) of Lemery.

A few minutes past midnight, a gunshot was heard outside the dance hall, followed by a burst of gunfire, causing commotion and panic among the revelers. Thereafter, the body of Eiman was found sprawled outside the dance hall. He had been shot to death. Within the hour, Allan's dead body was likewise discovered a few meters from the dance hall. He had been shot twice in the head.

Allan's mother Violeta testified that at around 1:00 o'clock a.m. on April 4, 1991, while she and her son Jagib

were on their way home from the dance hall, they saw Allan being dragged by the accused-appellants. They followed accused-appellants' group with Violeta pleading for her son's life. Her pleas, however, fell on deaf ears as the accused-appellants and their companions kicked and boxed Allan, whose face was already bloodied. She saw how Allan fell to the ground and, while kneeling, was shot by Nemesio in the head, and again by Almeniana when Allan was already prostrate. Fearing for their own lives, Violeta and Jagib fled to Ramon Ardonio's house. When the Ardonios returned to the scene of the crime, neither Allan nor any of the accused-appellants was there. They then proceeded to the hospital in Sara, Iloilo where they found Allan who was already dead.

Elvis Calubia, a friend of Allan, testified that he saw Nemesio and his companions at Ramon Ardonio's house (grandfather of Allan), looking for Allan. He later saw them take Allan with them.

Dr. Ricardo Jaboneta, medico-legal expert of the National Bureau of Investigation, who autopsied the victim's body, testified that the latter sustained two gunshot wounds in the head.[5] The victim died of traumatic shock secondary to multiple gunshot wounds in the head.[6]

Upon arraignment, all of the accused pleaded not guilty.

Accused-appellants interposed the defense of alibi and denial.

Nemesio declared that when he first heard gunfire, he went out to investigate, saw the dead body of his nephew Eiman, and learned that the assailant was a certain Allan Ardonio. He and his men went out to search for Allan, found him in his grandfather's "bodega," and brought him to the municipal building. Upon investigation, Allan denied killing Eiman and claimed that the real killers were his brother, Raymund and his father, Adolfo Ardonio. Consequently, Nemesio allegedly released Allan. He added that on their way to the house of Adolfo and Raymund they heard gunshots while walking in front of the schoolhouse. They then proceeded to the hall where they saw the body of Allan. Nemesio claimed that he even helped load Allan's body in the jeep of a certain Emilio Ansuyon Jr.

For his part, accused-appellant Almeniana alleged that he was not present when his co-accused saw the body of the victim since he was looking for his son.

The defense likewise interposed the theory that the assailant could have been one of Eiman's own relatives.

After trial, Judge Norberto E. Devera, Jr. rendered a decision dated February 7, 1994, the dispositive portion of which states, thus:

"WHEREFORE, premises considered, the Court finds NEMESIO BALANO and MORENO ALMENIANA guilty beyond reasonable doubt of the crime of Murder and hereby sentences each to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of Allan Ardonio, jointly and severally, the sum of Forty Thousand Pesos (P40,000.00) as burial and funeral expenses, to pay likewise said heirs, jointly and severally; the sum of Fifty Thousand (P50,000.00) as compensatory damages and another sum of Twenty Thousand Pesos (P20,000.00) as moral damages and to pay the costs. Accordingly, their property bonds are cancelled and pursuant to the directive of the Supreme Court, the said accused are immediately placed under custody.

As regards accused Noli Pama, Igmedio Basulgan, Danilo Moreno, and Arnulfo Sologastua, they are hereby acquitted of the charge. Their property bonds are ordered cancelled.

SO ORDERED."

In this appeal, accused-appellants maintain their innocence and claim that the trial court erred in finding them guilty of the crime charged.

We find the appeal unmeritorious.

Accused-appellants argue that Violeta could not have seen the shooting of her son Allan because she only learned of the incident from defense witness Leizle Bayona. At the time, Violeta was allegedly at the house of a certain Sergio Magsongsong so she could not have witnessed the shooting of Allan.

The trial court correctly disregarded the testimony of Bayona. Her testimony pales into insignificance with the positive identification of the murderers by the victim's mother and brother. At best, it can be said that Bayona's testimony was a mere afterthought, considering that she executed an affidavit eight months after the incident.

This Court has consistently held that when the issue is one of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. This rule, however, is not without exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the outcome of the case.^[7] None of these exceptions appears to be present in this case.

The testimonies of Violeta and Jagib are consistent and unequivocal eyewitness accounts positively identifying Nemesio Balano and Moreno Almeniana as the perpetrators of the crime. Both of them testified that accused-appellants shot the victim, which caused his death, thereby placing them at the scene of the crime and pinpointing their respective participation therein.

The pertinent portions of the testimony of Violeta Ardonio in the direct examination are quoted as follows:

Atty. Padojinog: — Who were with you when you went out of that gate and saw these persons dragging your son Allan?

A - Jagib was with me.

Q - How about your younger sister who were (sic) with you, where were they (at) that time?

A - They were inside the dance hall.

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Q - You said that you saw your son being dragged. What (sic) did you do when you saw your son being dragged (sic) by Nemesio Balano and Moreno Almeniana?

A - I shouted at them to please don't harm my son Allan and if he has committed any offense bring him to the municipal building and put him in jail.

Q - And what happened when you said that?

A - They continued to drag Allan.

Q - And what did you do when you saw them continuing to drag Allan?

A - I was shouting, please help me, have pity on my son, don't harm him.

Q - Why did you shout that?

A - Because I saw that my son was already bloody and they were dragging him.

Q - What else happened?

A - I followed them shouting and crying for help, sometimes I even sat on the ground while shouting at them not to hurt my son.

Q - And what happened after that?

A - And Allan upon seeing me shouted at me. Mother help me.

Q - And you said that you continued to follow Allan, how long have you travelled following your son?

A - About 10 meters

Q - Can you tell us why you were not able to approach your son?

A - I cannot approach them because I was being prevented by Danilo Moreno and Arnold Sologastua.

Q - And what happened while you were following your son?

A - I could not come nearer because they were aiming at me.

Q - How far were you from your son while you were being prevented?

A - About 10 meters

Q - And what happened later?

A - Upon reaching at some distance he was shot by Nemesio Balano

Q - And what happened to your son when he was shot by Nemesio Balano?

A - He fell on his left side and he was again shot by Moreno Alminiana (sic).

Q - When you saw your son shot by Nemesio Balano and Moreno Almeniana, what did you do?

A - I ran back with my son, Jagib.

Q - Where did you go?

A - To the house of my parents-in-law to ask for help."[8]

In this case, there is no reason to doubt the credibility of Violeta, as well as the veracity of her testimony. Her statements are not tainted with any contradiction or inconsistency. Moreover, her narration of the events she witnessed on that fateful morning is effectively corroborated by the testimony of her son Jagib, which, when taken together, sufficiently establish the participation of accused-appellants in the killing of Allan. The trial court, in finding accused-appellants guilty of the crime charged, correctly gave more weight to her testimony than to the defense of alibi of accused-appellants.

Resorting to the defense of alibi, accused-appellants argue that they were not in the place where the shooting of Allan occurred. Nemesio avers that they were on their way to the house of Adolfo and Raymund Ardonio, walking past the school house when they heard the gunshots that supposedly killed Allan in the dance hall. On the other hand, Almeniana claims that he did not go with the group to the house of Ramon Ardonio to investigate the killing of Eiman Balano. He claims that his son and wife were separated when the shots erupted and people started to scamper; so, he tried to look for his son at the house of Sergio Masongsong. He testified, however, that he was present when the body of the victim was being identified.

The defense of accused-appellants is untenable.

The positive assertions of the two eyewitnesses for the prosecution as to the accused-appellants' active participation in the crime far outweigh their alibi. The long settled rule is that for alibi to be credible, the accused must not only prove his presence at another place at the time of the commission of the offense, but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[9]

In the case at bar, accused-appellants' alibi cannot stand in the face of their positive identification as the perpetrators of the crime. Furthermore, while they claim that they were in front of the school house when they heard gunshots, they failed to show that it was physically impossible for any of them to have been at the scene of the crime at the time of its commission. The schoolhouse was only a few meters away from the place where the body of the victim was found and it is not physically impossible for accused-appellants to commit the killing and still be present in the place they claim they were. Besides, they were the last people to have seen the victim alive.

Moreover, this Court finds accused-appellants' claim that they immediately released Allan after he denied responsibility for the killing of Eiman Balano and implicated his brother, Raymund and father, Adolfo as those responsible, to be highly improbable. In the first place, accused-appellants claimed having received information that it was Allan who had shot and killed Eiman. Acting upon said information, they looked for Allan whom they found^[10] at the house of Ramon Ardonio. It would, therefore, be contrary to reason and logic for accused-appellants, who were members of the police, to immediately release Allan on the sole basis of the latter's denial of culpability. Under the circumstances, the normal course of action for the police would have been to conduct a further investigation of the suspect, instead of taking his statements at its face value. This circumstance, together with the consistent and credible testimonies of the prosecution witnesses, sufficiently establish the responsibility of accused-appellants for the death of Allan Ardonio.

Finally, to appreciate the qualifying aggravating circumstance of abuse of superior strength,^[11] what should be considered is whether the aggressors took advantage of their combined strength in order to consummate the offense.^[12] To take advantage of superior strength means to purposely use excessive force out of proportion to the means available to the person attacked to defend himself.^[13] In this case, accused-appellants were admittedly armed when they attacked and killed Ardonio who was unarmed.^[14] Four of their men, namely, Pama, Basulgan, Moreno and Sologastua, also surrounded and mauled Ardonio. The allegations of abuse of superior strength charged in the Information were duly proven by the prosecution. Hence, the Court agrees with the trial court that the qualifying circumstance of abuse of superior strength is attendant in the case at bar.

As regards the trial court's award for moral damages, we find the same to be unwarranted. Moral damages may be recovered in criminal offenses resulting in physical injuries, but there must be factual basis for the award.^[15] Based on the records of this case, we find no factual basis for the award of moral damages. The burial and funeral expenses proved in this case are the actual and compensatory damages that shall be awarded.^[16] Indemnity for the death of Allan Ardonio is awarded in the amount of P50,000.00 in accordance with current jurisprudence.^[17]

WHEREFORE, the appeal is DISMISSED and the Decision of the trial court convicting appellants Nemesio Balano and Moreno Almeniana of the crime of murder is hereby AFFIRMED subject to the modification that accused-appellants are sentenced to pay jointly and severally the heirs of Allan Ardonio civil indemnity in the amount of P50,000.00 and the amount of P 40,000.00 as actual and compensatory damages.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Rollo, pp. 36-42.

[2] Judge Norberto E. Devera, Jr., presiding.

[3] Rollo, pp. 41-42

[4] Record, p. 1 (Vol. I).

[5] TSN, February 12, 1992, pp. 19-20.

[6] Record, p. 8 (Vol. I).

[7] *People of the Philippines v. Rogelio Cristobal*, 252 SCRA 507 (1996), *People v. Arcilla y Cornejo*, G.R. No. 116237, May 15, 1996.

[8] TSN., March 25, 1992, pp. 13-17.

[9] People of the Philippines v. Ralph Alcantara and Andres Jose y Geronimo, 254 SCRA 384 (1996); People of the Philippines v. Jimmy Alberca, G.R. No. 117106, June 26, 1996; People v. Domingo Trilles, 254 SCRA 633 (1996); People v. Santos Canada, 253 SCRA 277 (1996); People v. Virgilio Batulan, 253 SCRA 52 (1996); People v. Romeo Mendoza y Reyes, 254 SCRA 61 (1996); People v. Fernando Castañeda y Sales, 252 SCRA 247 (1996).

[10] TSN, August 20, 1992, pp. 18-20.

[11] Article 14 of the Revised Penal Code.

[12] The Revised Penal Code by Ramon Aquino, Vol. II, p. 248, 1987 edition.

[13] People v. Casengal, 243 SCRA 37 (1995).

[14] TSN, October 2, 1992, p. 26

[15] People of the Philippines v. Patrolla, Jr., 254 SCRA 467 (1996).

[16] Article 2202, Civil Code of the Philippines.

[17] People v. Escandor, G.R. No. 95049, December 9, 1996; People v. Maturgo, Sr., 248 SCRA 519 (1995).

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