PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENNY NABLO ALIAS “TIMO”, JOSE NABLO AND ARNEL NABOR ALIAS “PONGAW”, DEFENDANTS-APPELLANTS.

G.R. No. 117711. December 06, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is an appeal from the Decision[1] of Branch 6, of the Regional Trial Court, Legazpi City, in Criminal Case No. 6145, finding appellants guilty of Murder and sentencing them as follows:

> "WHEREFORE, premises considered, decision is hereby rendered finding the accused Genny Nablo, Arnel Nabor and Jose Nablo, GUILTY beyond reasonable doubt of the crime of murder as defined and penalized under Article 248, of the Revised Penal Code and each is hereby sentenced to suffer the penalty of Reclusion Perpetua, to pay jointly and severally P50,000.00 as indemnity for the death of Egino Mujar, P5,000.00 as moral damages and P5,000.00 as funeral expences, and to pay the costs.
>
> SO ORDERED."[2]

Filed on February 26, 1993 by Prosecution Attorney II Eugenio L. Abion, the Information indicting appellants for Murder, alleges:

> "That on December 9, 1992 at more or less 11:30 o'clock in the morning, at Barangay Anoling, Camalig, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapons, conspiring, confederating and mutually helping one another for a common purpose, with intent to kill and taking advantage of superior strength, did then and there willfully and unlawfully attack, assault, stab and hack EGINO MUJAR y Nocido, hitting and inflicting upon him fatal injuries which resulted to and directly caused the death of said EGINO MUJAR y Nocido, to the damage and prejudice of his heirs.
>
> ACTS CONTRARY TO LAW."[3]

With the appellants, assisted by their counsel, Atty. Luis Dote, entering negative pleas upon arraignment on March 29, 1993,[4] trial ensued, with the prosecution presenting Marcelino Obligacion, Egilo Mujar, Mila Mujar and Dr. Jose Solano, as its witnesses.

For the defense, Salvador Mujar, Ramon Magdaong and the appellants themselves took the witness stand.

Testified on by its above-named witnesses, the version of the prosecution runs thus:

On December 9, 1992, at about 11:30 a.m., the deceased, Egino Mujar, and his brother Egilo Mujar, together with Marcelino Obligacion, emerged from the chapel of Barangay Anoling, Camalig, Albay, after attending the barrio fiesta mass. Egino Mujar, however, was left behind to invite his father-in-law on occasion of the fiesta while Marcelino and Egilo went ahead and waited for Egino Mujar at the boundary of Misi (Daraga, Albay) and Anoling (Camalig Albay), approximately one hundred (100) meters from the chapel.[5]

After waiting for around ten minutes, they saw people scampering for safety and shouting that people from Misi, were chasing them and attacking Egino Mujar, who was left behind. Thereupon, Egilo and Marcelino ran back to the chapel. On their way, five men armed with bolos coming from the opposite direction, started hurling stones, prompting Egilo and Marcelino to retaliate by also throwing stones at them,[6] at which juncture they noticed stones being hurled from below the dike, twenty (20) meters from the trail leading to the chapel. And, as the five-armed men fled, Egilo and Marcelino looked down at the three (3) meter deep dike and saw Egino Mujar surrounded by the appellant Jose Nablo, who was holding a bolo and appellants Genny Nablo and Arnel Nablo, who were both armed with ginunting (a sharp edged and pointed bolo).[7]

Egino Mujar tried to run away but he was hacked by Jose Nablo, hitting him on the back of the right shoulder. Genny Nablo followed with thrusts on the right side of the victim, causing the victim to fall on the ground face up and while in such position, Arnel Nabor stabbed him (victim) on the abdomen.[8]

Thereafter, Marcelino and Egino went down the dike as they hurled stones at the three appellants who retreated, brandishing their weapons in a challenging manner. Egilo Mujar left to inform their parents of the incident, while Macelino Obligacion brought the victim to the hospital.[9]

Dr. Jose Solano, resident physician of the Albay Provincial Hospital treated Egino Mujar of a stab wound on the side of the umbilicus, which caused two small intestines to protrude through the wound opening; two hack wounds on the right scapular area and incised wound on the left hand. The following day, December 10, 1992, the victim died of the said injuries he sustained.[10]

Appellants placed reliance on denial and alibi. They theorized that when the crime sued upon was committed, they were all in the house of Vicente Nabor at Anoling, Daraga, Albay. To bolster such alibi, they put on the witness stand Salvador Mujar, an uncle of the victim.

Theory of the defense:

On December 9, 1992, Salvador Mujar passed along the dike, after hearing mass at the chapel of Anoling, Camalig, Albay. Looking down, he saw Egino Mujar with a knife, quarreling with four persons he did not recognize, all armed with bladed weapons. Salvador tried to scare them by shouting that there was a policeman but one of the armed men tried to go near him, and he (Salvador) ran away for help. Sixty (60) meters from where he was, Salvador saw Egilo Mujar and Marcelino Obligacion having a drinking spree and he told them what he witnessed at the dike.[11]

Proceeding to the scene of the crime, they found no one there. On their way back, however, they heard somebody moaning in pain and when they checked the source of such voice, they saw the wounded Egino Mujar, who was then brought by Marcelino and Egilo to the hospital.[12]

On August 31, 1994 after trial, the lower court found the People's version more credible and thereon, it handed down the judgment of conviction appealed from.

Dissatisfied therewith, appellants have appealed to this Court assigning as errors, that:

> I
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE WEAK, UNRELIABLE AND INHERENTLY INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.
>
> II
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED, LOSING SIGHT OF THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE GUARANTEED TO EVERY INDIVIDUAL.

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III

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED ON GROUND OF REASONABLE DOUBT.[13]

The issue posited being factual and evidentiary, credibility of the witnesses assumes extreme importance. Well-settled to the point of being elementary is the rule that on the issue of credibility of witnesses, appellate courts will not disturb the findings by the trial court, which was decisively in a better position to rate the credibility of witnesses after hearing them and observing their deportment and manner of testifying during the trial. This doctrine stands absent any showing that certain facts and circumstances of weight and value have been overlooked, misinterpreted or misapplied by the lower court which, if considered, would affect the result or outcome of the case.[14]

After a thorough examination of the evidence on hand, the Court discerns no ground or basis for disregarding the findings and conclusions arrived at below.

As aptly observed by the court a quo, the testimony of Salvador Mujar could not be of help to appellants because he was not an eyewitness to the infliction of the injuries on the deceased. While he testified that he saw four armed men quarrelling with Egino Mujar, he did not see what transpired after he left to look for help. Neither did he state that the three appellants were not among the four armed men.[15] Indeed, the narration by Salvador Mujar is not sufficient to prove that the appellants were not the ones who killed Egino Mujar.

In their attempt to traverse and destroy the theory of the prosecution, appellants capitalized on the absence of a dying declaration of the victim, a statement of the witnesses regarding the startling incident as part of res gestae, and a finding of motive or ill will on the part of appellants. Appellants also stressed the supposed failure of Marcelino Obligacion and Egilo Mujar to point the exact scene of the crime, and their failure to immediately report the incident to the authorities.

These submissions are cannot be sustained. The absence of a dying declaration, statement forming part of res gestae, and of motive, is of no moment. The evidence on record suffices to support the judgment of conviction under scrutiny. What is more, proof of motive is not crucial in this case since the identity of appellants has been amply established.[16]

It bears stressing that this Court has consistently held that the testimony of a single witness, if straightforward and categorical is enough to convict.[17] More so in the present case where two eyewitnesses who were not impelled by ill motive,[18] testified on the culpability of the appellants, corroborating each other's testimony in all material and relevant points.

While it is true that the affidavit[19] implicating appellants in the murder of Egino Mujar on December 9, 1992, was executed only after 26 days, or on January 4, 1993, to be precise, the Court believes, and so holds, that such circumstance alone does not indicate a fabricated charge. After all, delay in reporting the occurrence of a crime or other unusual events in the rural areas is well known and cannot therefore, be taken against the prosecution.[20]

Neither is there any tenability in the alleged failure of the eyewitnesses to show the exact locus criminis. From pertinent records, it can be gleaned that Egilo Mujar and Marcelino Obligacion did indicate the place where the deceased was killed, of which location they even made a sketch,[21] reflecting the exact spots where they, the victim, and appellants were, at the time the crime was perpetrated.

Anent the alibi theorized upon by appellants, the trial court erred not in disregarding the same. For the defense of alibi to prosper, appellants should prove not only that they were at some other place when the crime was committed but that it would have been likewise physically impossible for them to be at the locus criminis at the

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approximate time of its commission.[22]

Evidently, a distance of barely 200 to 400 meters[23] from the scene of the crime to the house of Vicente Nabor (where all the appellants claim to be staying at the time the victim was killed) could not exculpate them (appellants) as the said distance which could take only minutes to negotiate, does not establish physical impossibility for appellants to be at the scene of the crime at the time of its commission.

Furthermore, appellants' alibi can not prevail over their positive identification by the eyewitnesses, Marcelino Obligacion and Egilo Mujar,[24] who could not have mistaken appellants' identity, considering that the crime was committed in broad day light, and their familiarity with appellants who are all residents of adjacent barangays.

Considering that the victim was alone, unarmed and trying to flee at the time of the attack, he was evidently no match to the three (3) assailants who were all armed with bladed or sharp-pointed weapons. By the manner of their attack, it is decisively clear that the appellants had the advantage of their number and combined strength. Thus, the trial court did not err in appreciating the qualifying circumstance of abuse of superior strength.[25]

As regards the civil liability, the award of P5,000.00 as moral damages is upheld, there being sufficient factual basis[26] therefor;[27] but the award of P5,000.00 for funeral expenses has to be deleted. It is a settled rule that there must be proof that actual or compensatory damages have been suffered and evidence of its actual amount.[28] In the present case, since no receipt was presented to support the claim for funeral expenses, the same can not be allowed.

Finally, the penalty for murder at the time of its commission on December 9, 1992, was reclusion temporal in its maximum period to death. Since there was no attendant modifying circumstance, the trial court properly imposed the penalty of reclusion perpetua, which is the medium period of the prescribed penalty for murder under Article 248 of the Revised Penal Code, before it was amended by R.A. No. 7659, in relation to Article 64 (2) of the said Code.[29]

WHEREFORE, the appealed decision is hereby AFFIRMED with the modification that, as above-indicated, the award for funeral expenses is deleted. Costs against the appellants.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Penned by Judge Vladimir B. Brusola.

[2] Decision, Rollo, p. 27.

[3] Rollo, p. 8.

[4] Original Records, p. 24.

[5] Rollo, p. 23 and Appellant's Brief, p. 2.

[6] Cross-examination of Marcelino Obligacion, June 3, 1993, Transcript of Stenographic Notes (TSN), p.14; see also TSN, pp. 13-14, Re-direct Examination of Marcelino Obligacion, June 4, 1993.

[7] Cross-examination of Marcelino Obligacion, June 3, 1993, TSN p. 23; Re-direct examination of Marcelino Obligacion, June 4, 1993, TSN, p.15; Cross-examination of Egilo Mujar, July 20, 1993, TSN, p. 12; Direct examination of Egilo Mujar, July 6, 1993, TSN, p. 7.

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[8] Direct examination of Egilo Mujar, July 6, 1993, TSN, pp. 7-8.

[9] Direct examination of Egilo Mujar, July 6, 1993, TSN, pp. 9-10.

[10] Decision, Rollo, p. 24.

[11] Direct examination of Salvador Mujar, May 18, 1994, TSN. pp. 3-12.

[12] Ibid.

[13] Appellants' Brief, p. 1.

[14] People vs. Lacatan, 295 SCRA 203, pp. 210-211 [1998].

[15] Decision, Rollo, p. 26.

[16] People vs. Quiamco, 268 SCRA 516, p. 530; citing: People vs. Lapura, 255 SCRA 85 and People vs. Flores, 237 SCRA 653.

[17] People vs. Hayahay, 279 SCRA 567, p. 578; citing: [People vs. dela Cruz], G.R. No. 118458, July 1997; and People vs. Ferrer, 255 SCRA 19 [1996].

[18] People vs. Letigio, 268 SCRA 227, p. 243; citing: People vs. Pacapac, 248 SCRA 77.

[19] O.R. p. 3.

[20] People vs. Carizo, 233 SCRA 687, p. 700; citing: People vs. Belen, 194 SCRA 447 [1991].

[21] Exhibit "2", O.R. p. 64.

[22] People vs. Henson, 270 SCRA 634, p. 640; citing: People vs. Umali, 242 SCRA 17 and People vs. Rivera, 242 SCRA 26.

[23] Decision, Rollo, p. 25.

[24] People vs. Henson, supra, citing: People vs. Quinevista, Jr., 244 SCRA 586.

[25] People vs. Caoile, 61 SCRA 73, p. 79.

[26] Direct examination of Mila Mujar, October 11, 1993, TSN., p. 8.

[27] People vs. Balano, 272 SCRA 782, 792; citing: People vs. Patrolla, Jr., 254 SCRA 467.

[28] People vs. Lachica, G.R. No. 94432, October 12, 1999; citing: People vs. Balisoro, G. R. No. 124980 May 12, 1999 and Del Rosario vs. Court of Appeals, 243 SCRA 600.

[29] People vs. Unarce, 272 SCRA 322, 323.

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