

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARDO C. ESPERO A.K.A. DUEG, ACCUSED-APPELLANT.

G.R. No. 117749. December 01, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of Dagupan City, Branch 44, in Criminal Case No. D-12290 convicting appellant Nardo C. Espero of the crime of murder.

Nardo C. Espero a.k.a. Dueg was charged with the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended, in an Information that reads:

That on or about the 26th day of November, 1993, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, NARDO C. ESPERO @ Dueg, being then armed with a bladed weapon, with treachery, evident premeditation and with intent to kill one JOSE TABABAN @ Totoy, did then and there wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by stabbing and hitting him on a vital part of his body with the said weapon, thereby causing his death shortly thereafter due to "Cardio Respiratory Arrest, Massive Intrathoracic Hemorrhage, Stab Wound" as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, to the damage and prejudice of the legal heirs of said deceased, JOSE TABABAN @ Totoy, in the amount not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine currency, and other consequential damages.

Contrary to Article 248 of the Revised Penal Code.

Upon being arraigned on December 10, 1993, accused Nardo Espero y Cerenio, assisted by counsel, entered the plea of "Not guilty" to the charge in the Information. Pre-trial was waived by the accused. Thereafter, trial on the merits ensued.

On May 24, 1994, the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Nardo Espero alias Dueg guilty beyond reasonable doubt as principal of the crime of Murder under Article 248 of the Revised Penal Code, and pursuant to law, hereby sentences the accused to suffer the penalty of Reclusion Perpetua. Accused is ordered to indemnify the heirs of the deceased in the amount of P50,000.00.

Accused is also ordered to pay Eustaquio Tababan the amount of P15,000.00 representing the expenses incurred by Eustaquio Tababan.

SO ORDERED.

Aggrieved by the decision, the accused, Nardo Espero, interposed the instant appeal.

It appears that in the evening of November 26, 1993, Roderick T. Perez and his uncle, Jose Tababan, attended the wake of a certain Boy Bardon in the Perez Market Site, Perez Blvd., Dagupan City. Roderick and his uncle Jose

were watching card games ("pusoy") when Nardo Espero, who appeared drunk, arrived. After staying inside the house of Boy Bardon, Nardo went outside and seated himself on one of the chairs near the people who were playing card games.[2]

Roderick revealed that they were not in good terms with Nardo who had the propensity of picking fistfights whenever he got drunk. Nardo had punched and kicked Roderick more than twenty (20) times prior to November 26, 1993 as a result of which the latter bore a grudge against the former.[3]

At around 9:10 o'clock of the same evening, Nardo approached Jose and for no apparent reason dragged him away from the premises. Suspicious that something untoward might happen, Roderick followed Nardo and his uncle.[4]

Upon reaching a vacant lot that was lit by a lamppost, Roderick saw Nardo embraced Jose with his left arm then he (Nardo) pulled from his waist a butcher's knife ("colonial") using his right hand. The duo grappled for possession of the knife before Nardo succeeded in stabbing Jose on the chest. Nardo hurriedly left the crime scene while Jose was rushed to the Nazareth General Hospital where he died soon thereafter. Roderick proceeded to the house of his aunt and informed her that Jose was stabbed.[5]

Meanwhile, Police Officers Cesar Calimag, Mariano Dolores, Jr., Franklin Obispo and Donato Estayo of the PNP, Dagupan City, received a report over the police radio that a certain Nardo Espero stabbed Jose Tababan in Perez Market, Perez Blvd., Dagupan City. Upon arrival at the crime scene, they proceeded to the Nazareth General Hospital in Perez Boulevard where the victim was brought for medical treatment. However, they failed to get his statement for the reason that he was already dead.[6]

In their search for the assailant the police and other concerned citizens spotted Nardo Espero on the same evening ducking behind the earth dike of a fishpond in Mayombo District, Dagupan City. Nardo attempted to escape and in the process left his pair of slippers that were partially submerged in the mud. The police officers and the concerned citizens chased him until he gave himself up when SPO2 Calimag fired a warning shot. When asked as to the whereabouts of the knife that he used in stabbing Jose Tababan, Nardo replied that he had thrown it away.[7]

On November 27, 1993, Dr. Tomas G. Cornel, M.D., Assistant City Health Officer of Dagupan City, conducted a post mortem examination on the cadaver of Jose Tababan. The autopsy report[8] that was prepared and signed by Dr. Cornel, shows the following findings:

EXTERNAL FINDINGS:

Stab wound, midclavicular line, level of the 4th intercostal space, left, ½" x ¼", penetrating. The edge of one side of the wound is sharp pointed.

INTERNAL FINDINGS:

Massive left intrathoracic hemorrhage with perforation of the left auricle of the heart.

CAUSE OF DEATH:

Cardio Respiratory Arrest
Massive Intrathoracic Hemorrhage
Stab Wound.

Eustaquio Tababan testified that he had adopted and reared the victim, Jose Tababan, like his own child. In connection with the death of Jose Tababan, Eustaquio spent almost P15,000.00 for the wake and burial expenses.[9]

For his defense, appellant Nardo C. Espero denied that he stabbed to death Jose Tababan. Nardo testified that at

around 6:00 o'clock in the evening on November 26, 1993, he hit Roderick Perez on the head inasmuch as the latter threatened to kill him. Thereafter, a fistfight occurred wherein Nardo was able to hit Roderick twice in the abdomen.[10]

After the fistfight, Nardo went to the fishpond, bringing with him a flashlight and a container, to catch fish. At around 11:00 o'clock in the evening, he was defecating in the fishpond when a person, who turned out to be SPO2 Cesar Calimag, shot him from the back. Fearing for his life, Nardo ran but he was pursued up to his house. While inside the house, Nardo acceded to SPO2 Calimag's invitation for both of them to talk somewhere. However, he was brought to the Dagupan City Police Station where he was incarcerated for allegedly killing Jose Tababan.[11]

In his Brief,[12] appellant Nardo Espero interposed the following assignments of error:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF MURDER DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE THAT WOULD WARRANT A CONVICTION BEYOND REASONABLE DOUBT.

Appellant contends that the lone prosecution eyewitness, Roderick Tababan-Perez, is biased for the reason that the deceased victim was his uncle and that he had a grudge against the appellant, and thus said witness wanted to exact revenge. He also contends that Roderick gave inconsistent testimonies with regard to the time of their arrival and departure from the wake in the evening of November 26, 1993 as well as regards the relative positions of the appellant and the victim while they were moving away from the premises of Boy Bardon. In addition, appellant contends that the failure of Roderick to stop the alleged aggression by the appellant against his uncle and to extend assistance after the latter was stabbed contradicted common human experience.

After a thorough review of the case, We find no cogent reason to overturn the decision of the trial court finding the appellant guilty beyond reasonable doubt for killing Jose Tababan. Prosecution eyewitness Roderick Perez, gave a clear and convincing account of the stabbing incident which sufficiently established beyond reasonable doubt the liability of the appellant for the death of the victim.[13] His presence at the scene of the crime was not successfully disputed by the appellant. On the other hand, appellant's uncorroborated defense of alibi is not persuasive and the same pales in the light of the positive identification made by Roderick Perez.[14]

It was established that appellant Nardo Espero dragged Jose Tababan from the premises of the late Boy Bardon to a nearby vacant lot in the evening of November 26, 1993. Thereafter, Nardo embraced and subsequently armlocked Jose with his left arm before he stabbed the victim with a butcher's knife. Nardo then immediately left the scene of the crime while Jose managed to run for a short distance before he fell and succumbed to the single stab wound on his chest.

The kinship existing between the deceased victim and prosecution witness Roderick Perez as well as the latter's alleged hostile attitude toward the appellant does not militate against the credibility of the said prosecution eyewitness. It has been held that revenge is a normal reaction of one betrayed, harmed or otherwise of one who has lost a loved one, but it does not follow that the desire to avenge such betrayal, harm or loss would include implicating even innocent persons.[15] In any event, the testimony of prosecution eyewitness Roderick Perez was found by the trial court to be honest and straightforward and therefore worthy of full faith and credence. Such

evaluation by the trial court on the credibility of the prosecution witness carries great weight and is entitled to high respect by this Court on appeal considering that the trial court had the opportunity to observe the witness firsthand and to note his demeanor, conduct and attitude under grilling examination.[16]

Moreover, the alleged inconsistencies in the testimony of Roderick Perez are more apparent than real. Roderick satisfactorily explained during the trial the slightly different answers he gave on direct and on cross examinations relative to the time of their arrival and departure from the wake of Boy Bardon as mere estimates for the reason that he was not wearing any watch at the time of the stabbing incident.[17] With respect to the relative positions of the victim and the appellant, the Solicitor General correctly noted that the duo initially traversed a distance of about twenty (20) meters from the premises of the late Boy Bardon. It was only upon reaching a vacant lot that the appellant embraced and armlocked the victim prior to the attack. Hence, the claim of the appellant that it was impossible for him to embrace and armlock the victim when they were supposed to be walking five (5) meters apart prior to the stabbing incident is misleading. It appears clear from the testimony of the prosecution's lone eyewitness that the said acts did not occur simultaneously.

Anent the alleged strange behavior of Roderick Perez in not extending assistance to his uncle if he were indeed present during the stabbing incident, We rule that different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[18] In the case at bench, the stabbing incident happened fast. The Court cannot fault and in fact fails to discern anything extraordinary with the actuation of the said prosecution eyewitness in deciding to inform his relatives of what had befallen his uncle inasmuch as there were other concerned people in the vicinity who brought the victim to the hospital. In acting the way he did, Roderick merely reacted naturally to the crime that had just occurred before his eyes.

It is our view and we hold that the appellant should be held liable only for the crime of homicide as defined under Article 249 of the Revised Penal Code. The evidence on record fails to prove that the victim, Jose Tababan, was unaware or totally defenseless from the attack of the appellant. On the contrary, Roderick Perez testified that the appellant was able to drag Jose Tababan for about twenty (20) meters to a vacant lot and the two even grappled for possession of the knife before the appellant succeeded in stabbing the said victim once on the chest. The pertinent portion of his testimony is quoted, thus:

Q: Why are you telling the Court that it was Nardo Espero (who) was the one who stabbed Jose Tababan?

A: He is the only companion, sir.

Q: Aside from that, what else?

A: They were grappling with each other.

Q: Why did you say that they were grappling with each other?

A: Because "Dueg" (Espero) was armed with a knife.[19]

In other words, there was no treachery nor premeditation when the appellant fatally stabbed the victim.

WHEREFORE, the appealed Decision is hereby **AFFIRMED** with the **MODIFICATION** that the appellant, Nardo Espero y Cerenio, is guilty only, beyond reasonable doubt, of the crime of Homicide as defined in Article 249 of the Revised Penal Code; and the penalty imposed on the appellant is reduced to the indeterminate sentence

of twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and to pay to the legal heirs of the victim, Jose Tababan, the amount of P50,000.00 by way of civil indemnity ex delicto and the amount of P15,000.00 for and as actual damages.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

- [1] Penned by Judge Crispin C. Laron. Rollo, pp. 19-24.
- [2] TSN dated January 14, 1994, pp. 3-5; TSN dated January 24, 1994, pp. 5, 8-13.
- [3] TSN dated January 24, 1994, pp. 6-8.
- [4] TSN dated January 14, 1994, p. 6.
- [5] Id., pp. 7-16.
- [6] TSN dated January 20, 1994, pp. 4-5.
- [7] Id., pp. 6-7; TSN dated February 3, 1994, pp. 3-10.
- [8] Exhibit "A".
- [9] TSN dated January 25, 1994, pp. 5-6.
- [10] TSN dated March 21, 1994, pp. 2-4.
- [11] Id., pp. 5-7.
- [12] Rollo, pp. 41-63.
- [13] People vs. Correa, 285 SCRA 679, 689(1998).
- [14] People vs. Kulais, 292 SCRA 551, 577(1998).
- [15] People vs. Baccay, 284 SCRA 296, 304(1998).
- [16] People vs. Pili, 289 SCRA 118, 131(1998).
- [17] TSN dated January 25, 1994, pp. 2-3.
- [18] People vs. Luzorata, 286 SCRA 487, 491(1998); People vs. Matubis, 288 SCRA 210, 220(1998).
- [19] TSN dated January 14, 1994, p. 12.

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