

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE BELTRAN, @ “DUCKTAIL,” ACCUSED-APPELLANT.

G.R. No. 119306. July 31, 1996

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Dante Beltran alias "Ducktail" was charged with murder in an information that reads as follows:

"That on or about the 16th day of March 1992, between the hours of 11 o'clock in the evening to 12 o'clock midnight, in barangay Batasan, municipality of Macabebe, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, DANTE BELTRAN alias "Ducktail," with deliberate intent to kill, with malice afore-thought and with evident premeditation, with treachery and nighttime purposely sought to facilitate the commission of the offense, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Josephine Castro Wisco by then and there stabbing the latter with a deadly weapon on the different parts of her body, inflicting upon said victim mortal and fatal injuries which caused her death thereafter." [1]

The prosecution established that accused-appellant and the victim, Josephine Castro Wisco, were living together as husband and wife, although the latter was married to a certain Danilo R. Wisco, who was working in Saudi Arabia. On March 16, 1992, at about 6:00 P.M., appellant and Josephine left the latter's house in Sta. Rita, Macabebe, Pampanga to see a mutual friend, Josephine Yabut, a fish vendor in Masantol, Pampanga.[2] The couple found Yabut buying some fish at the Masantol Pantalan at about 7:00 P.M. Yabut gave them some of the crabs and shrimps she bought. The three then proceeded to the Aling Bidang Restaurant where they had several rounds of beer. Later in the evening, Josephine confided to Yabut that her (Josephine's) husband was returning from Saudi Arabia. Yabut advised Josephine to discuss this development with appellant but soon noticed that the couple was having a misunderstanding. They continued drinking until 11:00 P.M. Thereafter, Yabut went home as appellant and Josephine boarded a tricycle towards Sta. Rita, Macabebe.[3]

Sometime before 12:00 midnight, Orlando Meneses was driving his tricycle with a friend, Sisenando Flores. As they passed by the Sta. Rita-Batasan Cemetery in Macabebe, they saw appellant coming out of the cemetery gate. The place was well-lighted and they noticed appellant wipe his hands and arms. Upon seeing the two, appellant stopped and hid his hands behind him. Meneses felt something wrong. At 6:00 A.M. of the following day, March 17, 1992, he and Flores reported to the barangay captain what they saw and suggested that they go to the Sta. Rita-Batasan cemetery. At the cemetery, they discovered the dead body of Josephine with multiple stab wounds.[4] Near the gate was a pair of black sandals and several meters away was a plastic bag containing some crabs and shrimps, a can of milk, a packet of detergent, a pair of denim pants and a t-shirt. All were identified as belonging to the victim.[5]

Josephine's autopsy reveals that she sustained twenty-two stab wounds as follows:

"FINDINGS:

1. Abrasions/Contusions, shoulder joint, left.
2. Incised Wounds:
 - 2.1 arm, lower 3rd, posterior, left, 'V'-shaped, 5 x 3 cm.
 - 2.2 arm, lower 3rd, anterior, left, 4 cm.
 - 2.3 arm, middle 3rd, posteriolateral, right, 4.5 cm.
3. Stabbed wounds:
 - 3.1 neck, anterolateral, left, 2 cm. x 2.5 cm., non-penetrating.
 - 3.2 chest, below SCM, MCL, right, 2 cm., non-penetrating.
 - 3.3 chest, 2nd ICS, MCL, left, 2 cm., non-penetrating.
 - 3.4 abdomen, upper quadrant, left, 1.6 cm., non-penetrating.
 - 3.5 chest, 4th ICS, MCL, right, 2.5 cm. x 6 cm., directed posteriorly, medially and inferiorly, puncturing the heart.
 - 3.6 chest, 7th ICS, MAL, right, 3 cm. x 10 cm., directed posterior, medially and slightly inferiorly, incising the dome of the liver.
 - 3.7 chest, 8th, ICS, PSL, right, 6 cm. x 10 cm., directed posteriorly, medially and slightly superiorly, puncturing the heart.
 - 3.8 chest, SCM, PSL, right, 2.7 cm. x 12 cm., directed posteriorly, medially and slightly superiorly, puncturing the heart.
 - 3.9 abdomen, upper quadrant below SCM, MML, right, 3 cm. x 12 cm., directed posteriorly, medially and superiorly, incising the dome of the liver.
 - 3.10 chest, 3rd ICS, MCL, left, 2.5 cm. x 4 cm., directed posteriorly and slightly, superiorly and laterally, puncturing the upper lobe of the left lung.
 - 3.11 chest, 8th ICS, AAL, left, 2.3 cm., directed posteriorly, medially and inferiorly.
 - 3.12 chest, 9th, ICS, PAL, left, 2 cm., directed anteriorly, medially and inferiorly.
 - 3.13 back, level of C-7, PVL, left, 2.7 cm. x 10 cm., directed anteriorly, inferiorly and slightly laterally, puncturing the upper lobe of the right lung.
 - 3.14 back, level of T-7, MScL, right, 3 cm., directed anteriorly, superiorly and slightly medially.
 - 3.15 back, level of L-4, PVL, right, 2 cm., directed anteriorly, medially and superiorly.
 - 3.16 buttocks, upper outer quadrant, left, 1.5 cm., directed anteriorly, medially and superiorly.
 - 3.17 buttocks, lower inner quadrant, left, 1.5 cm., directed anteriorly, superiorly and slightly medially.
 - 3.18 buttocks, lower inner quadrant, left, 1.6 cm., directed anteriorly, superiorly and slightly medially.
 - 3.19 thigh, middle 3rd, anterolateral, right V-shaped, 3 x 2 cm., directed posteriorly, medially and superiorly.
 - 3.20 arm, upper 3rd, anterolateral right, 2.3 cm.
 - 3.21 forearm, upper 3rd, posteromedial, right, 2 cm., directed anteriorly, superiorly and medially.

3.22 forearm, upper 3rd, posterolateral, right, 1.6 cm., directed anteriorly, superiorly and medially.

Hemothorax, bilateral, moderate.

Hemopericardium, massive.

Hemoperitoneum, moderate.

CAUSE OF DEATH: Cardiorespiratory Arrest due to Hemorrhagic Shock due to Multiple Stabbed Wounds, Body."[6]

Police investigation showed that the victim was last seen with appellant and that appellant owned a fan knife[7] which he usually cleaned and played with. Rowena Wisco, the victim's eight-year old daughter, revealed that in the afternoon before the victim's death, appellant used the knife in threatening her mother into giving him some money.[8] The police looked for appellant but could not find him. A warrant for his arrest remained unserved until almost two years later. Appellant was apprehended on December 24, 1993 in San Roque, San Isidro, Nueva Ecija by mere accident. The Nueva Ecija police took him into custody after he failed to present the registration papers of the motorcycle he was driving. In the course of the investigation, the police discovered that appellant had a pending warrant of arrest against him in connection with a murder case in Pampanga. Appellant was turned over to the custody of the Pampanga police.[9]

In defense, appellant admitted that he and Josephine were lovers but denied they lived together. Allegedly, Josephine ended their relationship on February 25, 1992 when she learned that her husband was coming home from Saudi Arabia. Appellant wanted to forget Josephine so he left Pampanga the following day, February 26, and stayed with his friend in Nueva Ecija. He lived there for almost two years, helping his friend tend pigs and cook salted eggs to earn a living.[10] He was later apprehended by the Nueva Ecija police who mistook him for the mastermind of a carnapping syndicate. He learned of Josephine's death and of his standing warrant of arrest from the police.[11]

The trial court rendered a decision on January 2, 1995 convicting appellant of murder qualified by treachery and sentenced him to reclusion perpetua, as follows:

"WHEREFORE, premises considered and finding the accused guilty beyond reasonable doubt of the crime of murder qualified by treachery, the court hereby renders judgment sentencing the accused as follows:

1. To suffer the penalty of reclusion perpetua and the accessories of the law;
2. To indemnify the heirs of the deceased Josephine Castro Wisco the amount of Sixty Four Thousand Eight Hundred Forty (64,840.00) Pesos as actual damages,
Thirty Thousand (P30,000.00) Pesos as exemplary damages, and Fifty Thousand (P50,000.00) Pesos as moral damages;
3. To pay the costs.

SO ORDERED."[12]

In this appeal, appellant argues that:

I

"THE LOWER COURT ERRED IN CONCLUDING THAT THE WITNESSES FOR THE PROSECUTION HAVE PROVEN THE CIRCUMSTANCES ADEQUATE ENOUGH IN PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

II

THE LOWER COURT ERRED IN PICKING OUT ONLY EVIDENCES THAT MAY REDOUND TO THE CONVICTION OF THE ACCUSED, BUT COMPLETELY DISREGARDING THOSE THAT MAY LEAD TO HIS ACQUITTAL.

III

THE LOWER COURT ERRED IN ABSOLUTELY DISREGARDING THE DEFENSE OF ALIBI DESPITE THE WEAKNESS OF THE PROSECUTION'S EVIDENCE."[13]

Appellant claims that the trial court erred in sustaining the testimonies of prosecution witnesses Josephine Yabut and Orlando Meneses which allegedly were incredible, fabricated and fraught with inconsistencies. It is also charged that the trial court violated appellant's presumption of innocence by upholding the prosecution's medical evidence and ignoring exculpatory evidence.

The appeal is without merit.

A review of the records reveals that the testimonies of Orlando Meneses and Josephine Yabut are clear, candid and straightforward. Faulting their testimonies for inconsistencies on minor details will not destroy their credibility. Time and again, we have held that minor lapses even enhance the veracity of the testimonies of witnesses as they erase any suspicion of a rehearsed declaration.[14] Bolstering the credibility of Meneses and Yabut is the lack of evidence that they were impelled by improper and ulterior motives to testify falsely against appellant.[15]

Moreover, Josephine Yabut's testimony was corroborated by the victim's daughter, Rowena, and Porfirio Waing, another tricycle driver. Rowena testified that her mother and appellant were lovers and that Yabut was their mutual friend whom they visited in the afternoon before her mother's death.[16] Waing testified that he saw Yabut, appellant and Wisco together outside the Aling Bidang Restaurant at about 11:00 P.M. of March 16, 1992.[17]

The attempt to downgrade the testimony of Meneses cannot succeed. Meneses testified that he and Sisenando Flores saw appellant alone and acting suspiciously at the Sta. Rita-Batasan Cemetery between 11:00 and 12:00 midnight. The Joint Affidavit of Orlando Meneses and Sisenando Flores[18] may have been executed seven (7) days after the incident but this does not render the statement a mere afterthought. What is important is that Meneses and Flores reported what they saw to the barangay captain first thing the morning after the incident. This fact was corroborated by the barangay captain himself.[19] Moreover, Meneses explained that it was only later that he and Flores found time to have their statement taken by the municipal judge.[20]

We reject appellant's contention that the failure to present Sisenando Flores gives rise to the presumption that his testimony would have been unfavorable to the prosecution. If presented as a witness, Flores would merely corroborate Meneses' testimony. As it is, Meneses' testimony by itself is credible and can stand the test of reason. If appellant felt Flores' testimony would favor him, he should have called Flores to the witness stand. The coercive processes of the court were at appellant's disposal to obtain Flores' testimony.[21] Conversely, the presentation in court of barangay captain Edgar Flores, despite his non-inclusion in the list of witnesses cited in the information, does not make him an "eleventh-hour witness" and render his testimony worthless. For one, the list was not exclusive but states "and others" were to be presented.[22] Secondly, it is the prerogative of the prosecution to call unlisted witnesses to testify.[23] The object of the listing of witnesses' names is merely to avoid the presentation of surprise witnesses and to enable the defense to examine their record, morality and character and prepare for their testimony.[24] Appellant could have resorted to discovery proceedings to avoid surprise. In any event, when an unlisted witness is placed on the witness stand, the defense is still given the opportunity to cross-examine him and in the process, assail his character and credibility.[25]

As regards the medical evidence, Dr. Alfredo Bondoc, the doctor who conducted the autopsy on the victim, admitted that the wounds on the victim could have been inflicted by more than one person using more than one weapon. His testimony is as follows:

"ATTY. MORALES: Now, these several wounds inflicted on the body of the victim can you determine which among them was first inflicted?

WITNESS: Yes, sir.

Q: There are several wounds which have been inflicted on the body of the victim, it is possible that it could have been inflicted by several persons, is that right?

A: Yes, sir.

COURT: It is also possible that the same wounds were inflicted by one person?

A: Yes, sir.

COURT: Dr. Bondoc, considering the nature and extent of the injuries sustained by Josephine Castro Wisco, would you be able to tell the court more or less the size of the blade of the weapon which was used by the assailant?

WITNESS: The size of the blade being used by the assailant has a minimum length of around 1.5 cm., sir.

COURT: What do you mean by the length?

A: The blade, sir.

COURT: I mean the width of the blade could have been?

A: A minimum of 1.5 cm., sir, it is the smallest wound we have seen.

COURT: How about the length of the blade of the weapon which was used by the assailant, were you able to determine?

A: The minimum length of the weapon used should 12 cm., sir.

COURT: And the maximum length?

A: I cannot say the maximum, sir.

COURT: How about the maximum width of the blade, you said the minimum was 1.5 cm.?

A: It's very hard to tell the maximum width because sometimes the injuries are slight but with large internal injury, sir.

COURT: Dr. Bondoc, would you be able to testify as to how many weapons were used by the assailant?

A: In this instant case the wounds inflicted were almost consistent and it is slightly possible that they were caused by one, sir.

COURT: It is slightly possible that the wounds inflicted were caused by the same weapon.

Proceed.

ATTY. MORALES: So you don't also exclude the possibility, Dr. Bondoc, that more than one weapon was used?

A: No, sir.

COURT: What do you mean by no, sir?

A: There can be more than one weapon as long as those weapons are almost the same which I mentioned, sir.

COURT: Meaning a minimum of 1 1/2 in width and a minimum of 12 cm. in length."[26]

Dr. Bondoc testified that the victim's wounds could have been inflicted by one or more weapons. At the same time, however, he did not discount the possibility that the wounds were inflicted by one and the same weapon because the wounds were consistent in appearance.

Appellant argues that the court should have sustained Dr. Bondoc's theory that the wounds were inflicted by several weapons because this favors the innocence of the accused. The number of weapons used in stabbing Josephine is immaterial. The fact remains that she was stabbed and that she died because of her stab wounds. The conclusion that Josephine's death was perpetrated by appellant has been conclusively proven by the following circumstances: (1) Josephine and appellant were lovers; (2) appellant was seen in possession of a fan knife before he and the victim saw Yabut; (3) appellant, the victim and Yabut were at the Aling Bidang Restaurant in Masantol when Yabut learned that the victim's husband was returning from Saudi Arabia and because of this, the lovers had a misunderstanding; (4) the victim was last seen with appellant at 11:00 P.M. when they boarded a tricycle together towards the direction of Macabebe; 5) Between 11:00 P.M. and 12:00 midnight, in Macabebe, appellant was seen coming out of the Sta. Rita-Batasan Cemetery wiping his arms and hands and when startled, trying to hide something behind him; (6) inside the said cemetery, Wisco's dead body was found full of stab wounds and nearby were the crabs and shrimps Yabut earlier gave her and appellant; (7) appellant fled Pampanga and went into hiding in Nueva Ecija until his arrest almost two years later.

The foregoing circumstances have been satisfactorily proven by the prosecution and their combination establishes, beyond reasonable doubt, the conclusion that appellant indeed killed Josephine. Against this phalanx of positive evidence, appellant's lame and unconvincing defense of alibi cannot prevail.

The trial court however incorrectly appreciated the qualifying circumstance of treachery. There is treachery when, in the commission of the crime, the offender employs means, methods and forms which directly and specially insure the execution thereof without risk to himself arising from any defense the offended party might make.[27] The essence of treachery is the swift and unexpected attack without the slightest provocation by the victim.[28] In the case at bar, the victim may have sustained twenty-two (22) stab wounds but there is no evidence as to the manner in which the attack was made or how the stabbing resulting in her death began and developed. The existence of treachery cannot be established from mere suppositions nor drawn from circumstances that existed prior and after the killing; it must be proved by clear and convincing evidence or as conclusively as the killing itself.[29] Where treachery is not adequately proved, appellant can only be convicted of homicide.[30]

Nor can the generic aggravating circumstance of nighttime be appreciated. There is no proof that this was purposely sought by appellant or taken advantage of by him to insure the commission of the crime.[31] Neither is there any showing that nocturnity facilitated the commission of the offense since, as earlier stated, there were no witnesses as to how and where the killing was actually committed.

As regards appellant's civil liability, the trial court failed to award death indemnity of P50,000.00 to the victim's heirs in accordance with Article 2206 of the Civil Code and prevailing jurisprudence.[32]

IN VIEW WHEREOF, accused-appellant Dante Beltran alias "Ducktail" is found guilty of the crime of homicide and, there being no aggravating nor mitigating circumstances, is sentenced to suffer an indeterminate penalty of ten (10) years of prison mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. He is also ordered to indemnify the heirs of the victim, Josephine Wisco, P50,000.00 for her death in

addition to the civil indemnity awarded by the trial court.

SO ORDERED.

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

- [1] Information dated August 10, 1992, Records, p. 2.
- [2] TSN of April 13, 1994, p. 15.
- [3] TSN of March 25, 1994, pp. 9-17.
- [4] TSN of April 6, 1994, pp. 10-13; Exhibit "C", Records, p. 69.
- [5] Exhibits "A" to "A-11", "D", Records, pp. 56-67, 70-71.
- [6] Exhibit "G", Records, pp. 74-75.
- [7] A "balisong" which was approximately one foot long. (TSN of April 13, 1994, pp. 11-12).
- [8] TSN of April 13, 1994, pp. 11-12.
- [9] TSN of June 3, 1994, pp. 8-9.
- [10] TSN of July 22, 1994, pp. 6-9; TSN of August 24, 1994, pp. 5-7.
- [11] TSN of July 22, 1994, p. 12.
- [12] Records, p. 165.
- [13] Appellant's Brief, p. 1, Rollo, p. 45.
- [14] *People v. Israel*, 231 SCRA 155 [1994]; *People v. de la Pena*, 232 SCRA 72 [1994].
- [15] *People v. Villafuerte*, 232 SCRA 225 [1994]; *People v. Pascua*, 206 SCRA 628 [1992].
- [16] TSN of April 13, 1994, pp. 9, 15-16.
- [17] TSN of March 21, 1994, p. 8.
- [18] Exhibit "C", Records, p. 69.
- [19] TSN of April 29, 1994, pp. 6-9.
- [20] TSN of April 6, 1994, p. 22.
- [21] *People v. Samillano*, 207 SCRA 50 [1992].
- [22] Information, Records, p. 2.
- [23] *People v. de Asis*, 228 SCRA 267, 272 [1993]; *People v. Mandapat*, 196 SCRA 157, 162 [1991]; *People v. Lacson*, 1 SCRA 414 [1961].
- [24] *People v. Morado*, 4 SCRA 292 [1962].
- [25] *People v. de Asis*, *supra*, at 272-273; *People v. Mandapat*, *supra*, at 162-163; *People v. Morado*, *supra*, at 295.
- [26] TSN of May 6, 1994, pp. 28-31; Emphasis supplied.

[27] *People v. Devaras*, 205 SCRA 676 [1992]; *People v. Tinampay*, 207 SCRA 425 [1992]; *People v. Literado*, 209 SCRA 319 [1992].

[28] *People v. Abapo*, 239 SCRA 469 [1994]; *People v. Gonzales*, 210 SCRA 4 [1992]; *People v. Gabatin*, 203 SCRA 225 [1991].

[29] *People v. Cedenio*, 233 SCRA 356 [1994]; *People v. Ablao*, 229 SCRA 274 [1994]; *People v. Tiozon*, 198 SCRA 368 [1991]; *People v. Caldito*, 182 SCRA 66 [1990].

[30] *People v. Manlulu*, 231 SCRA 701 [1994]; *People v. Tiongco*, 236 SCRA 458 [1994].

[31] *People v. Desalisa*, 229 SCRA 35 [1994]; *People v. Marra*, 236 SCRA 565 [1994]; *People v. Toring*, 191 SCRA 38 [1990].

[32] *People v. Flores*, 237 SCRA 653 [1994] and a host of other cases.

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