

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO AVILLANA Y CATASCAN, ACCUSED-APPELLANT.

*G.R. No. 119621. May 12, 2000*

Ponente: PARDO, J.

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### PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Branch 121, Kalookan City convicting accused Romulo Avillana y Catascan of murder and sentencing him to reclusion perpetua and to pay P54,000.00 as actual and compensatory damages, P50,000.00 as civil indemnity and another P50,000.00 as moral damages.

On February 3, 1993, Assistant City Prosecutor Bagis S. Ismael filed with the Regional Trial Court, Kalookan, Branch 121 an information charging accused with murder, committed as follows:

"That on or about the 19th day of May, 1992 in Kal. City, MM., Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack and stab with a bladed weapon one ANDRESITO SINSORO Y PABILONA, hitting the latter on (sic) his right chest, thereby inflicting upon said victim serious physical injuries, which injuries caused the latter's instantaneous death.

"Contrary to law."[2]

On February 15, 1993, upon arraignment, accused pleaded not guilty to the crime charged.[3] Trial ensued accordingly.

The facts are as follows:

Between 10:00 and 11:00 in the evening of May 19, 1992, Andresito Sinsoro, Arnold Fabello and one Romeo Cabigting were walking side by side in front of the Star Elementary School, Phase 3, Bagong Silang, Caloocan City waiting for a jeepney to bring them home, after attending a party hosted by their friend Kuya Amang. Suddenly, accused approached from behind the trio, took an extra step forward, then stabbed Andresito in his chest with an 8 inch-long knife. Romeo Cabigting held Andresito to break the latter's fall. Accused then turned his ire on Romeo Cabigting who let go of the wounded Andresito and ran for his life. Arnold Fabello also made a hurried escape when accused was going to attack him next. He (Fabello) took a tricycle and went to Andresito's wife, Conchita Sinsoro, to inform her of what happened to her husband. Conchita Sinsoro and her nephew immediately went to the Tala Hospital where Andresito was brought. But at around 1 a.m. of the next day (May 20, 1992), Conchita Sinsoro went to Arnold Fabello's house to inform him that Andresito was dead. They proceeded to the Bagong Silang Police Detachment that very same ungodly hour to report Andresito's death.[4]

In his defense, accused narrated an alibi.[5] He claimed that from 7:30 a.m. to 5:00 p.m. of May 19, 1992, he was doing repair jobs on the windows and roofing of his aunt's house at 240 Road 1, Pag-asa, Quezon City which he began to undertake on May 18, 1992. Accused left Pag-asa after 5:00 p.m., arrived at his house in Phase II, Bagong Silang, Kalookan City at around 7:30 in the evening and slept. He went out of his house between 10 p.m.

and 11:00 p.m. to buy cooking oil and bananas for the next day's breakfast. Upon reaching a nearby store owned by Barangay Tanod Laurencio Jovillano, accused was approached by an inebriated Eddie Cuevas and became the object of the latter's drunken ire ("kinursunada"). In the brewing tension between accused and Eddie Cuevas, Jose Tabingo and Barangay Tanod Laurencio Jovillano arrived and pacified the two (2) protagonists. Jose Tabingo invited accused to his house where the latter stayed until 5:00 in the morning of the next day (May 20, 1992). Accused returned to his house, ate breakfast and then left for his aunt's house at Pag-asa, Quezon City to continue his repair job. He stayed there until May 23, 1992.

Accused-appellant's alibi was corroborated by Jose Tabingo[6] and Barangay Tanod Laurencio Jovillano.[7]

The trial court gave credence to the prosecution's version of the circumstances surrounding Andresito's death, and appreciated the aggravating circumstance of treachery against accused. On November 9, 1994, the trial court rendered decision, the decretal portion of which reads:

"WHEREFORE, in view of the foregoing considerations, the Court finds accused ROMULO AVILLANA Y CATASCAN GUILTY beyond reasonable doubt of the crime of Murder and sentences him to suffer the penalty of RECLUSION PERPETUA, to pay the sum of FIFTY FOUR THOUSAND (P54,000.00) PESOS as actual and compensatory damages, to indemnify the heirs of the victim the sum of FIFTY THOUSAND (P50,000.00) PESOS and another sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages. With Costs.

"SO ORDERED." [8]

Hence, this appeal.

Asserting his innocence, accused-appellant submits that his guilt has not been proven beyond reasonable doubt. The issue boils down to credibility of witnesses.

The defense presented three (3) witnesses to refute the testimony of sole prosecution eyewitness Arnold Fabello. We examined the transcript of Arnold Fabello's testimony and found that it indeed remained consistent and straightforward even during cross-examination. The trial court did not err in giving full credence to Arnold Fabello's testimony. It is well-settled that witnesses are to be weighed, not numbered, such that the testimony of a single, trustworthy and credible witness could be sufficient to convict an accused.[9] Criminals are convicted, not on the number of witnesses against them, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of doubt.[10]

We thus give full faith and credit to Arnold Fabello's account that it was accused-appellant who stabbed the victim Andresito to death on the night in question. Not only was the place where the stabbing took place well lighted which provided Arnold Fabello with sufficient illumination to positively identify accused-appellant as the assailant, there is no showing that Arnold Fabello was ill-motivated in implicating accused-appellant in a serious charge such as murder. Where the locus criminis afforded good visibility, and where no improper motive can be attributed to the prosecution eyewitness for testifying against the accused, then his version of the offense deserves much weight.[11]

In this connection, accused-appellant's alibi, though supported by the testimonies of his friends, weakens in the face of positive identification by one credible, unbiased witness.[12] It should be stressed that for the defense of alibi to prosper, the accused must not only prove that he was not at the scene of the crime when it happened but also that it was impossible for him to be there at the time of the commission of the offense.[13] In this case, accused-appellant himself testified that his house and the store where he was supposed to buy his breakfast necessities were just a one (1) kilometer-walking distance away from the Star Elementary School where the

victim Andresito was killed.[14] One (1) kilometer is an easily traversible distance which cannot discount accused-appellant's presence at the crime scene and his killing of Andresito.

Contrary to accused-appellant's claim, the fact that witness Arnold Fabello's sworn statement dated February 1, 1993 (Exhibit "E") did not mention that accused-appellant took one step ahead before stabbing Andresito does not destroy the witness' credibility. Sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Testimonies given during trials are much more exact and elaborate. Thus, testimonial evidence carries more weight than sworn statements.[15]

The Court will not disturb the trial court's finding of treachery. The victim Andresito was caught by surprise and defenseless when accused-appellant made his stealthful approach from behind and lunged a knife into Andresito's chest. Clearly, treachery attended the commission of the crime since the attack, although frontal, was no less sudden and unexpected, giving the victim no opportunity to repel it or offer any defense of his person.[16]

As correctly decreed by the trial court, the imposable penalty is reclusion perpetua under the then prevailing provisions of Article 248 of the Revised Penal Code, in the absence of any aggravating or mitigating circumstance. The award of P50,000.00 as civil indemnity is also correct, in line with prevailing jurisprudence.[17] The P50,000.00 award for moral damages is proper being consistent with current case law.[18]

Nonetheless, we have to modify the P54,000.00 award for actual and compensatory damages. Out of that amount, only P15,233.24 appears receipted - P14,000.00 as evidenced by a receipt issued by St. Matthew Memorial Services[19] and the remaining P1,233.24 was for the Meralco bill for the month of May, 1992.[20] Actual damages cannot be awarded in the absence of receipts to support the same, in line with the rule that actual damages cannot be allowed unless supported by evidence in the record.[21] The Court can only give credence to actual expenses supported by receipts and which appear to have been genuinely expended in connection with the victim's death.[22]

WHEREFORE, the trial court's conviction of accused-appellant Romulo Avillana y Catascan of murder is hereby **AFFIRMED**, with modification. He is sentenced to reclusion perpetua with the accessory penalties of the law and to pay the heirs of the victim Andresito Sinsoro y Pabilona the reduced amount of P15,233.24 as actual damages, P50,000.00 as civil indemnity and another P50,000.00 as moral damages. With costs.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Crim. Case No. C-42098 (93), Judge Adoracion G. Angeles, presiding, Rollo, pp. 24-37.

[2] Rollo, p. 2, Records, p. 1.

[3] Records, p. 6.

[4] TSN, June 7, 1993, pp. 4-9; June 14, 1993, pp. 3-13.

[5] TSN, February 15, 1994, pp. 2-17.

[6] TSN, October 15, 1993, pp. 2-6.

[7] TSN, October 8, 1993, pp. 2-5.

[8] Rollo, pp. 24-37.

[9] People vs. Galam, G.R. No. 114740, February 15, 2000; People vs. Lotoc, 307 SCRA 471 (1999); People vs. Platilla, 304 SCRA 339 (1999); People vs. De la Paz, 299 SCRA 86 (1998)

- [10] People vs. Benito, 303 SCRA 468 (1999), citing Bautista vs. Court of Appeals, 288 SCRA 171 (1998)
- [11] People vs. Tolibas, G.R. No. 103506, February 15, 2000.
- [12] People vs. Tolibas, *supra*.
- [13] People vs. Bahenting, 303 SCRA 558 (1999); People vs. Dacibar, G.R. No. 111286, February 17, 2000; People vs. Virtucio, Jr., G.R. No. 130667, February 22, 2000.
- [14] TSN, February 15, 1994, p. 13.
- [15] People vs. Sanchez, 302 SCRA 21 (1999), citing People vs. Padoa, 267 SCRA 64 (1997); People vs. Miranda, 235 SCRA 202 (1994)
- [16] People vs. Dando, G.R. No. 120646, February 14, 2000; People vs. Suelto, G.R. No. 126097, February 8, 2000.
- [17] People vs. Vermudez, 302 SCRA 276 [1999]; People vs. Sañez, G.R. No. 132512, December 15, 1999; People vs. Barellano, G.R. No. 121204, December 2, 1999.
- [18] People vs. Floro, G.R. No. 120641, October 7, 1999; People vs. Durado, G.R. No. 121669, December 23, 1999.
- [19] Exhibit "A".
- [20] Exhibit "A-2".
- [21] People vs. Nialda, 289 SCRA 521 (1998)
- [22] People vs. Ricafranca, G.R. Nos. 124384-86, January 28, 2000.

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