

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. RESTITUTO DIMAILIG y CARAIG, accused-appellant.

G.R. No. 120170. May 30, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Kalookan City, Branch 123 convicting Restituto Dimailig y Caraig of murder, sentencing him to reclusion perpetua, and to pay the heirs of the victim, Arlene Guavez, the amount of fifty thousand pesos (P50,000.00) as indemnity, fifty thousand pesos (P50,000.00) as moral damages, twenty six thousand eight hundred pesos (P26,800.00) as actual damages and three hundred thousand pesos (P300,000.00) as payment for loss of earning capacity.

On October 5, 1993, Second Assistant City Prosecutor Eulogio C. Mananquil, Jr. of Kalookan City filed with the Regional Trial Court, Branch 123, Kalookan City an information charging Restituto Dimailig y Caraig with murder, committed as follows:

"That on or about the 3rd day of October 1993 in Kalookan City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack and stab with a bladed weapon (balisong) on the chest of one ARLENE GUAVES Y SEVILLANA, thereby inflicting upon the latter serious physical injuries which caused her death (DOA) at the MCU Hospital, this city.

"Contrary to law."[2]

At the arraignment on March 10, 1995, accused Restituto Dimailig pleaded not guilty to the crime charged.[3] Trial ensued.

The record reveals that Arlene Guaves,[4] 22 years old, worked as a saleslady at the Bagallon General Merchandising and Gift Shop on the 2nd floor of the LRT Northmall in Kalookan City. According to Josephine Sevillana, sister of the victim, accused Restituto Dimailig courted Arlene for a year, but she was uncertain if the two became sweethearts.[5]

At around 3:45 in the afternoon of October 3, 1993, Josephine Sevillana called up Arlene, who was on duty as a saleslady, to confirm their agreement to meet that afternoon. Arlene, sounding fearful, asked Josephine to go to Northmall, revealing that accused Dimailig had previously threatened to kill her.

At around 5:00 in the afternoon, Josephine arrived at the Northmall. As she made her way to the gift shop, she noticed accused Dimailig standing in front of the Fuji Film Store beside the shop. Josephine entered the gift shop and found Arlene alone inside. She did not see Arlene talk to accused Dimailig outside.

At around 5:30 p.m., Arlene and Josephine prepared to close the gift shop. Then, Arlene asked Josephine to accompany her to the comfort room which was around five to six meters from the shop. They were walking towards the comfort room when, suddenly, accused Dimailig appeared. He pulled Arlene away from Josephine.

Then, he stabbed Arlene's chest with a balisong several times. Arlene fell to the ground.

People milling around the mall started gathering around accused Dimailig. Moments later, several persons began to maul him.

Josephine and some salesladies brought Arlene to the Manila Central University Hospital (MCU), but Arlene was pronounced dead on arrival.[6]

PO3 Rogelio Avila and PO3 Conrado Tuazon were directing traffic along Rizal Avenue at the LRT Grand Central station when a commotion across the street at the Northmall caught their attention. PO3 Avila saw a man being mauled by several persons on the island of the street. PO3 Avila and PO3 Tuazon pacified the crowd and learned that the man had stabbed a woman. Some persons shouted, "Nakasaksak ng babae!" PO3 Avila handcuffed the man and apprised him of his constitutional rights. The man who sustained injuries was silent. PO3 Avila invited bystanders to the police station to give their statements regarding the incident but nobody obliged. Acting upon information that the victim was inside the mall, PO3 Tuazon entered Northmall but discovered that bystanders had brought the victim to the hospital. He went outside and, together with PO3 Avila, hailed a passenger jeepney. They took the man, identified as accused Dimailig, to the hospital.[7]

The body of Arlene Guaves was brought to the morgue of the Dulce Funeral Parlor. Feliñito Sevillana, the victim's father, identified it as the body of his daughter Arlene. He consented to the conduct of an autopsy.[8]

Dr. Florante F. Baltazar, Chief Medico-Legal Officer of the PNP Crime Laboratory conducted the autopsy and found that the victim sustained twelve (12) stab wounds on the chest, an abrasion, and an incise wound.[9] He indicated in Medico-Legal Report No. M-1710-93 that multiple stab wounds caused Arlene's death. He opined that a pointed and bladed instrument, such as a balisong, could have caused the injuries and that the victim could have been attacked frontally.[10]

Meanwhile, SPO1 Cesar Antonio received a call regarding a victim of violence brought to MCU Hospital.[11] Upon arrival at the hospital, he realized that the victim had died. However, he found the victim's sister, Josephine Sevillana, at the hospital and instructed her to proceed to the police headquarters to give a statement concerning the incident.

At the police headquarters, traffic officers Tuazon and Avila turned over accused Dimailig to SPO1 Cesar Antonio. When SPO1 Antonio summoned Josephine Sevillana, she pointed to accused Dimailig as the person who stabbed her sister. Accused maintained his silence. When SPO1 Antonio asked accused Dimailig why he killed Arlene, he stated, "Bata ko siya, niloko niya ako kaya sinaksak ko siya." [12]

Josephine Sevillana executed a written statement the following day, October 4, 1993, positively identifying accused Dimailig as the one who stabbed her sister Arlene. Her mother, Sonia Sevillana y Garchitorena, also executed a statement that day.

Since Arlene Guaves was separated from her husband, her family took care of her wake and burial. For the 7-day wake, the Sevillanas spent P1,000 a night. As shown by an agreement with Dulce Memorial Service, the family spent P10,239.40 for funeral services.[13] They paid fees to the city treasury in the amount of P52.00[14] and to the La Loma Catholic Cemetery for the grave and niche, P600.00.[15] They spent P5,000.00 for the tomb but no receipt was issued by the person who constructed it. For the funeral, they hired seven (7) passenger jeeps at P600.00 each but no receipt was issued for that amount.

According to Sonia Sevillana, Arlene was employed as a saleslady at the Bagallon Gift Shop earning one thousand three hundred pesos (P1,300.00) a month. Sonia came to know of that fact from Arlene herself and her

employer, Mrs. Bagallon, who voluntarily gave Sonia a certification on April 13, 1994 that before her death, Arlene was in her employ.[16] Sonia testified that the pain caused by the death of her daughter Arlene could not be compensated and that Arlene left a child whom Sonia has to care for.[17]

Testifying as the sole defense witness, accused Dimailig, 27 years old, asserted that Arlene was his girlfriend. They first met on November 21, 1991 when she bought pandesal from the bakery owned by accused Dimailig, located in Novaliches. Accused Dimailig asked her address, intending to write to her when he leaves for Kuwait. Arlene obliged him but did not inform him that she was married and a mother to a child.

Accused Dimailig, still unmarried, started courting Arlene. According to him, they became sweethearts on January 22, 1992. They dated regularly and Arlene often visited him at home. He called her "Mama" or "Sweetheart" and she sent him letters, pictures, and cards.[18]

Accused Dimailig went to Kuwait, stayed there for a year, and returned to the country on July 9, 1993. At this time, he discovered that Arlene was married but separated from her husband, and had a child with her husband. He was uncertain if Arlene and her husband had the intention of reconciling with each other. However, he knew that Arlene often talked to her husband and that she met with him several times.

At around 4:00 in the afternoon of October 3, 1993, he was at the office of Exponent in Buendia, applying for work abroad. He left at 4:30 p.m. and proceeded directly to the Northmall Shopping Center to tell Arlene that he would be leaving for Jeddah. When he disembarked at the LRT station, he saw a crowd milling around the mall. Curious, he elbowed his way to the object of the crowd's attention and saw Arlene soaked in blood. He approached her and embraced her. Suddenly, he found himself being engulfed by the crowd. Around twenty (20) people hit his face and chest, making him lose consciousness. He regained consciousness at the Kalookan General Hospital, where two policemen brought him. Afterwards, he was taken to the police station. He claimed that the policemen failed to inform him of his constitutional rights. He said that he did not give any statement to the police admitting to the crime. He also denied being identified by Josephine Sevillana at the police headquarters. He declared his love for Arlene Guaves and reiterated that he could never commit the murder for which he was charged with.

On March 30, 1995, the trial court rendered a decision finding accused Dimailig guilty beyond reasonable doubt of murder, qualified by taking advantage of superior strength and aggravated by treachery and evident premeditation. The trial court decreed as follows:

"WHEREFORE, this Court finds the accused, Restituto Dimailig y Caraig guilty beyond reasonable doubt and sentences him to suffer imprisonment of reclusion perpetua and to pay the heirs of Arlene Guavez (sic) the sum of P50,000.00 as indemnity; pay moral damages in the sum of P50,000.00; pay actual damages in the sum of P26,800.00 and the indemnity for the loss of earning capacity of the deceased in the amount of P300,000.00.

"SO ORDERED." [19]

Hence, this appeal.

In his brief, accused-appellant Dimailig questioned the credibility of witness Josephine Sevillana, and stated that her testimony was replete with inconsistencies.

He pointed out that Josephine first declared that Arlene and accused-appellant had a relationship but later changed her answer to the effect that she did not know if indeed they had a relationship. Thereafter, she testified that she did not know anything about it.

Accused-appellant also imputed doubt as to whether Josephine was actually present at the Northmall on the day of

the stabbing and witnessed the attack against the victim. He alleged that Josephine was inconsistent in describing the manner in which the deceased Arlene was stabbed for she initially declared that accused blocked their way and pulled Arlene before stabbing her, then later testified that accused-appellant attacked them from behind.

Such attempts to discredit the witness must fail.

Josephine's testimony on the relationship between accused-appellant and the victim Arlene Guaves is credible. She knew accused-appellant was courting her sister but she did not know if the two became sweethearts. Indeed, Josephine could be expected only to testify on matters that were evident to her; she could not be expected to testify on a relationship that she was not privy to. A witness can testify only on facts which he knows of his own personal knowledge.[20]

Furthermore, a witness is not expected to remember an occurrence with perfect recollection of minute details; even the most truthful witnesses often err and issue confused statements.[21] By the suddenness of the assault, Josephine could not be expected to remember the details of the attack. What was important was her unequivocal declaration that the attack was sudden and unexpected, depriving the victim of opportunity to put up a defense. She remembered that her sister was pulled away from her. She was shocked at the suddenness of the attack. She also did not falter in identifying accused-appellant as the attacker. Contrary to accused-appellant's assertion, inconsistencies and contradictions in the declarations of a witness do not necessarily destroy the witness' credibility. They may even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[22]

Furthermore, the witness was the sister of the victim, without any motive to testify falsely. In fact, being a relative of the victim of the crime, she is propelled by greater motive to see to it that the real culprit of the crime be punished. "The natural interest of witnesses, who are relatives of the victim, in securing the conviction of the guilty would deter them from implicating persons other than the true culprits." [23]

Josephine Sevillana knew accused-appellant, since he courted her sister for a year. No motive was given for her to falsely impute a heinous crime against accused-appellant. "Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit." [24]

Accused-appellant likewise assailed the trial court's conclusion that he was "positively identified not only by Josephine Sevillana but by the crowd where the accused found himself to be a victim of mob violence as narrated by PO3 Rogelio Avila." [25] He alleged that the testimony of PO3 Avila identifying him as the killer of the victim as pointed out by the crowd that gathered at the mall constituted hearsay evidence and hence, inadmissible.

Indeed, the testimony of a witness regarding a statement made by another person, if intended to establish the truth of the facts asserted in the statement, is hearsay evidence; it is otherwise if the purpose of placing the statement in the record is merely to establish the fact that the statement was made or the tenor of such statement. [26]

In this case, the responding police officers testified that they saw bystanders enraged over the stabbing of a woman and who identified accused-appellant as the person responsible therefor. However, none of the bystanders testified in court. The policemen themselves were not able to personally witness the stabbing incident. Although the statements made by the crowd to the police officers may be considered as averments for the purpose of showing the fact of such assertion, they do not establish the truth of the facts asserted therein. [27] Thus, such statements of the bystanders, as reported by the policemen, which aim to point culpability to accused-appellant for the crime are hearsay and have no probative value.

However, Josephine Sevillana positively identified accused-appellant as the assailant. The testimony of a single eyewitness is sufficient to support a conviction if positive and credible as in this case. [28]

Accused-appellant assails the finding that treachery and evident premeditation attended the commission of the crime.

There is treachery "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [29] The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the latter's part. [30]

The wounds sustained by the victim were located on the chest, thus indicating a frontal attack. However, eyewitness Josephine Sevillana testified that accused-appellant, armed with a knife, attacked the victim when she was unarmed and without any opportunity to defend herself. Hence, although the attack may have been frontal, the attack was sudden and unexpected, leaving no opportunity for the victim to put up an adequate defense. [31] Thus, treachery attended the commission of the crime.

Aside from treachery, the trial court appreciated the aggravating circumstance of evident premeditation against accused-appellant. In evident premeditation, there must be proof of the concurrence of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between the determination and execution, to allow the offender to reflect upon the consequences of his act. [32] Evident premeditation is based on overt acts. There must be a demonstration by overt acts of a criminal intent that is notorious and manifest. [33]

In this case, the trial court found accused-appellant's threat to the victim as an overt act manifesting evident premeditation. However, Josephine Sevillana admitted in court that she was not able to confirm the threat made by accused-appellant as she did not hear any word uttered by him when she arrived at the Northmall and her sister did not tell her anything when she arrived at the gift shop. An expression of hatred does not necessarily imply a resolution to commit a crime; there must be a demonstration of outward acts of a criminal intent that is notorious and manifest. [34] Evident premeditation must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning. [35] Thus, evident premeditation may not be appreciated against accused-appellant.

Accused-appellant also averred that the trial court erred in appreciating the qualifying circumstance of abuse of superior strength against him.

A qualifying circumstance must be alleged in the information. [36] Otherwise, it may be considered as a generic aggravating circumstance if proven during the trial that such circumstance attended the commission of the crime. In this case, the information did not allege abuse of superior strength as a qualifying circumstance. Thus, although proven during the trial, such circumstance may be treated only as an ordinary aggravating circumstance, not one to qualify the crime. However, the aggravating circumstance of abuse of superior strength is deemed absorbed in treachery. [37]

The fatal stabbing of Arlene Guaves was qualified by treachery. Hence, the crime committed was murder under Article 248 of the Revised Penal Code. Since the crime was committed on October 3, 1993, prior to the enactment of Republic Act No. 7659, [38] the penalty for murder under the Revised Penal Code in effect at the time was reclusion temporal maximum to death. Considering the absence of any aggravating or mitigating circumstances, the penalty imposable is the medium period, which is reclusion perpetua. [39]

The award to the victim's heirs of civil indemnity ex delicto in the amount of fifty thousand pesos (P50,000.00) is proper since civil indemnity is automatically granted to the heirs of the victim without need of proof other than the commission of the crime. [40] The fifty thousand pesos (P50,000.00) awarded as moral damages is likewise

reasonable for the pain and mental suffering that the victim's brutal murder caused her family.[41]

Inasmuch as the Court can only give credit for expenses supported by receipts,[42] actual damages shall consist only of the duly documented sums of P10,239.40 for funeral services, P52.00 for the victim's burial at the La Loma Cemetery in Kalookan City, and P600.00 for the grave and niche.

The trial court properly awarded to the heirs of Arlene Guaves the amount equivalent to her unearned income based on her annual income of P15,600.00 (P1,300.00 x 12). Since the victim died at the age of 22, her unearned income shall be computed in accordance with the formula of $\frac{2}{3} \times [80 - \text{age of victim at the time of death}] \times \text{a reasonable portion of the net income which would have been received by her heirs for support}$. [43] The "reasonable portion of the net income" shall be arrived at by deducting living expenses which is the equivalent of 50% of the gross annual income, from the same gross annual income.[44] Thus:

$$x = 2 \times (80 - 22) \times (15,600 - 7,800)$$

$$3$$

$$= 38.67 \times 7,800$$

$$= \text{P}301,626.00$$

WHEREFORE, the Court hereby AFFIRMS the decision of the Regional Trial Court, Kalookan City, Branch 123 in Criminal Case No. C-45260, finding accused Restituto Dimailig y Caraig guilty beyond reasonable doubt of murder, and imposing upon him the penalty of reclusion perpetua. The Court further sentences accused to pay the heirs of the victim, Arlene Guaves, the amount of fifty thousand pesos (P50,000.00) as civil indemnity and fifty thousand pesos (P50,000.00) as moral damages. The Court MODIFIES the appealed decision by awarding to the heirs of the victim the amount of three hundred one thousand six hundred twenty-six pesos (P301,626.00) for loss of earning capacity and ten thousand eight hundred ninety-one pesos and forty centavos (P10,891.40) as actual damages. With costs.

SO ORDERED.

Puno, (Acting Chairman), and Kapunan, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

Ynares-Santiago, J., no part.

[1] In Crim. Case No. C-45260, Decision promulgated on March 30, 1995, Judge Pablo P. Inventor, presiding.

[2] Original Record, Criminal Case No. C-45260, p. 1.

[3] Certificate of Arraignment, Original Record, p. 18.

[4] As spelled in the death certificate, Exhibit "A", Original Record, p. 44.

[5] TSN, April 21, 1994, pp. 4-6.

[6] TSN, April 21, 1994, pp. 11-20; June 15, 1994, pp. 12-20.

[7] TSN, July 21, 1994, pp. 3-14.

[8] Exhibit "I", Original Record, p. 54.

[9] Medico-Legal Report, Original Record, p. 55.

[10] TSN, October 20, 1994, pp. 12 & 18.

[11] TSN, August 25, 1994, pp. 4-22.

[12] Testimony of SPO1 Cesar Antonio, TSN, August 25, 1994, p. 6.

- [13] Exhibit "E", Original Record, p. 48.
- [14] Exhibit "E-1", Original Record, p. 49.
- [15] Exhibit "G", Original Record, p. 52.
- [16] Exhibit "F", Original Record, p. 51.
- [17] TSN, August 31, 1994, pp. 2-5.
- [18] Exhibits "1" to "7", Original Record, pp. 79-86.
- [19] Decision, Original Record, pp. 116-121.
- [20] *People vs. Manhuyod, Jr.*, 290 SCRA 257 (1998)
- [21] *People vs. Tidula*, 292 SCRA 596 (1998) citing *Antonio vs. Court of Appeals*, 339 Phil. 5189 (1997) and *People vs. Daen, Jr.*, 314 Phil. 280 (1995)
- [22] *People vs. Rada*, G.R. No. 128181, June 10, 1999.
- [23] *People vs. Quilang*, G. R. Nos. 123265-66, August 12, 1999.
- [24] *People vs. Alfeche*, 294 SCRA 352 (1998)
- [25] Brief for Accused-Appellant, Rollo, pp. 51-52.
- [26] *People vs. Cusi*, 14 SCRA 944 (1965)
- [27] *People vs. Franco*, 269 SCRA 211 (1997)
- [28] *People vs. Alagon*, G. R. Nos. 126536-37, February 10, 2000.
- [29] Art. 14 (16), Revised Penal Code.
- [30] *People vs. Mante*, G. R. No. 129694, August 18, 1999; *People vs. Jaberto*, G. R. No. 128147, May 12, 1999.
- [31] *People vs. Dando*, G. R. No. 120646, February 14, 2000; *People vs. Suelto*, G. R. No. 126097, February 8, 2000.
- [32] *People vs. Peñaflorida*, G. R. No. 130550, September 2, 1999; *People vs. Sanchez*, G. R. No. 131116, August 27, 1999; *People vs. Sumalpong*, 348 Phil. 501, 527 (1998)
- [33] *People vs. Villamor*, 292 SCRA 384 (1998)
- [34] *People vs. Padama*, G. R. No. 132137, October 1, 1999.
- [35] *People vs. Sison*, G. R. No. 119307, August 20, 1999.
- [36] *People vs. Sambulan*, 289 SCRA 500 (1998)
- [37] *People vs. Villablanca*, G. R. No. 89662, October 1, 1999; *People vs. Francisco*, G. R. No. 110873, September 23, 1999.
- [38] Effective December 31, 1993.
- [39] *People vs. Cleopas*, G. R. No. 121998, March 9, 2000; *People vs. Bitoon*, G. R. No. 112451, June 28, 1999.
- [40] *People vs. Obello*, 284 SCRA 79 (1998)
- [41] *People vs. Tambis*, G.R. No. 124452, July 28, 1999.
- [42] *People vs. Silvestre*, G.R. No. 127573, May 12, 1999; *People vs. Gutierrez, Jr.*, 302 SCRA 643 (1999)
- [43] *People vs. Espanola*, 338 Phil. 403, 431 (1997)
- [44] *People vs. Gutierrez, Jr.*, *supra* at p. 667.

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