

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE CHUA Y VALENCIA, DEFENDANT-APPELLANT.

G.R. No. 121792. October 07, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision dated March 25, 1995 of the Regional Trial Court of Manila, Branch 12 in Criminal Case No. 90-83644 convicting Jose Chua y Valencia of the crime of Murder.

The information^[1] filed against appellant reads:

That on or about December 15, 1989, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities, and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon one PEPITO LOPEZ Y SANTOS, by then and there stabbing and shooting the latter several times, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death thereafter.^[2]

On arraignment,^[3] appellant pleaded not guilty to the crime charged.

The trial court summarized the testimonies of the prosecution and the defense witnesses as follows:

Fernando Sanchez was presented as a witness by the prosecution. He testified that on August 15, 1977, at about 7:00 o'clock in the evening, he was sent by his grandmother Herminia Lopez for an errand to his uncle Pepito Lopez, to ask for some amount of money. When he reached the place of his uncle, he saw his uncle and a certain Jose Chua acting in a fighting stance around the table (naggigirian). He was ten (10) feet away from them when he saw them in that fighting stance. There were two (2) other companions of Jose Chua, the accused. They were watching the two. Then, the accused stabbed the decedent while he was lying down as he stepped on wet vegetables. He was stabbed (4) times. While the accused was stabbing the victim, he was shot twice by a companion of the accused. The other companion clubbed him. The injuries were inflicted successively. He was frightened and shocked but he was able to recover. He remained standing. When someone shouted "Pulis", the three (3) scampered away. He went home and narrated the story to his mother and grandmother. He said he knew Jose Chua because he is the friend of his father. He did not know of any reason why they had to inflict injuries to his uncle. (tsn, pp. 1- 4, Dec. 10, 1990) He gave a statement to the police. (Exh. "A")

On cross-examination, he said that it was a market place where the incident happened. When he arrived at the place at the store at C.M. Recto, Manila, he saw the accused and his uncle gearing to a fighting stance around the table (tsn, p. 6, Dec. 10, 1990) He reiterated his direct testimony that he saw Jose Chua stab his uncle four (4) times; one companion of Chua shot his uncle twice and the other companion clubbed his uncle. He gave his statement to the police five (5) months after the incident because he said he was afraid. Finally, he said, the place was lighted when the incident happened. (tsn, pp. 1- 4, Dec. 17, 1990) He further said that he was shocked when he saw the incident that is why he was not able to ask for help. (tsn, p. 5, Dec. 17, 1990)

Dr. Florante Baltazar testified that he conducted the post mortem examination on the victim. He testified that the victim suffered or sustained a gunshot wound that was thru and thru located at the anterior left. There was also a gunshot wound at the right supraclavicular region of the victim. Aside from those injuries, he also had a hacking wound, a stab wound and an incise wound. The gunshot wounds were fatal and the victim could not have survived. The witness further testified that the gun used as per examination of the slugs was a .38 caliber. The distance between the assailant and the victim was more or less two (2) feet. (tsn, pp. 3 - 5, Nov. 19, 1990) On cross-examination, he said that on the basis of the kind of wounds sustained, there could have been more than one assailants (sic). (tsn, p. 6, Nov. 19, 1990)

After the prosecution rested its case, the accused Jose Chua testified that on December 15, 1989 at around 7:00 o'clock in the evening, he was at the corner of Sto. Cristo and Recto Avenue, Divisoria, Manila, helping chairman Jimmy Camacho arranging the tables. He was approached by Pepito, the victim and he saw that there was something bulging in his waistline. Pepito told him to get vegetables. He told him that there was an object bulging on his waistline, then Pepito asked him if he was going to draw something from his right waistline, so he told Camacho about it and the latter told him to arrest Pepito but he ran away. Pepito attacked him but he ran away. Then he ran around a table and Pepito chased him, holding a bladed weapon. He slipped and when he stood up, somebody approached him and shot him. He said, he heard two shot (sic) from the Chairman and another two shots. He came to know Pepito only when he was asking for vegetables. There were many vendors around at the time of the incident. After the incident, he was shocked and then went home. (tsn, pp. 1 - 3, Jan. 21, 1991)

On cross-examination, he said it was the victim who chased him with a bladed weapon. At the time he was being chased, Pepito had a gun on his waistline, but never got hold of it. It was somebody who shot the victim, but he was not sure if it was Camacho. He said that he did not know if Pepito was stabbed because after the incident, he left for home. But he admitted that there were three of them, a barangay tanod, the Chairman and himself at the scene of the incident. He never talked to anyone about the incident. He said it was not his habit of bringing along bladed weapons. He admitted that he was involved in a killing incident where he was sentenced to serve a sentence of 6 to 12 years and he served for five (5) years. Asked whether he had a case involving violation of PD 9 as amended by BP Blg. 6 for Illegal Possession of Deadly Weapon at the MTC, Bacoar, Cavite (CR#1057), he said, no. Asked if he had a robbery case, initially, he said none, but eventually admitted that there is. (Crim. Case No. 272449) Asked if he has another robbery case before RTC Branch 41, Manila, he said, none but when he was asked if he is the only Jose Chua who resided at 611 Nicomedes St., Tondo, Manila who was charged in two (2) robbery cases, he said this is the only one. (tsn, pp. 3-9, Jan. 25, 1991)

Mr. Jaime Camacho testified that he is the Barangay Chairman of Barangay 1 Zone 1 District 1, Manila with jurisdiction along Sto. Cristo to Asuncion. On Dec. 15, 1989, at about 7:00 o'clock in the evening, he was along Sto. Cristo attending to the complaints from vendors. When a certain Jose Chua greeted him. He greeted Chua, too. Then, a certain Pitong or Pilog approached Chua and challenged him. He observed that when Pepito Lopez (Pikong or Pitong) approached Chua, his right hand was positioned in such a way as if his hand was holding something in his right waist. Chua kept distance from him. He tried to pacify them and he succeeded, then he left, thinking that the problem has been settled. He was at the other side of the street leading to Lakandula street, about 15 meters away from where he separated the two when he heard people shouting, so he turned his head towards the direction of Sto. Cristo leading to Bilbao street. He saw a person who suddenly fell to the ground, and he learned later that it was Pikong. He did not do anything as there were policemen who responded. The accused was about 2 meters away from the victim when he saw him lying prostrate on the ground. The accused was carrying a bladed weapon about 30 cm. in length. He said that during that time, he did not hear any gunshots. (tsn, pp. 2-6 March 8, 1991)

On cross examination, he said that he owned a .38 revolver but he never shot or fired it on December 15, 1989. In fact, he never heard any gunshot in that place where the incident happened inspite of the fact that he was

only 15 meters away. What he saw was that Jose Chua was carrying bladed weapon immediately after the incident happened. He saw no other person in the vicinity where the victim was lying carrying any bladed weapon. He never attempted to personally investigate or go near the scene of the incident since there were policemen who responded. He merely told the policemen that there was an incident that happened. He told the police verbally that he saw Jose Chua carrying a bladed weapon while standing over the fallen Pepito Lopez. Furthermore, he told the police the name Jose as the one carrying the bladed weapon and the one responsible for the death of the victim because he saw him carrying a deadly weapon. (tsn, pp. 6-12, March 8, 1991) He further testified that when the police officers responded, he was not certain if the accused was still at the scene of the crime. (tsn, p. 13, March 8, 1991) Finally, he said that he did not bother to check if Pikong was carrying something. He just thought he was carrying something at his waistline. He said too, that the victim and Jose Chua were the only persons who quarrelled. (tsn, p. 14, March 8, 1991)

The last proceedings in this case show that the accused admitted that he had several cases in court like: (1) Criminal Case No. 2749-A for violation of BP 9 where he pleaded guilty to a lesser offense under Sec. 3928 of the Revised Ordinances of the City of Manila and sentenced to a straight penalty of 20 days imprisonment; (2) Criminal Case No. 58061, RTC, Manila Branch 49, for robbery; (3) a case of theft at the Circuit Criminal Court, Manila; (4) Criminal Case No. 122657 for violation of PD 9 as amended by BB6, at the MTC, Bacoor, Cavite; (5) Criminal Case No. 88-62514, RTC, Manila, Branch 41, for Robbery where he was convicted. (tsn, [pp. 2-3, March 22, 1991])[4]

The trial court found appellant guilty of the crime of Murder, and sentenced him to suffer the penalty of reclusion perpetua. Appellant was further ordered to indemnify the heirs of the victim in the amount of P50,000.00 as actual damages, P50,000.00 as moral damages, and P30,000 as exemplary damages.[5]

In this appeal, appellant assigns to the trial court the following sole error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[6]

Appellant asserts that the appellant had no participation whatsoever in the death of the victim Pepito Lopez; that he was only armed with a knife, whereas the victim's death was caused by two gunshot wounds as testified to by the medico-legal officer, Dr. Florante Baltazar;[7] that it was one of the onlookers who shot the victim;[8] that the testimony of Fernando Sanchez was "fabricated to establish a scenario that [appellant] conspired with the two other assailants and thus convict [appellant] of the crime of murder." [9]

Appellant points out that Fernando referred to the two other assailants as appellant's "henchmen"; however, appellant could not afford to hire henchmen on his income as a jeepney driver.[10] He also insists that Fernando Sanchez could not have ascertained who the companions of appellants were because at the time of the incident, there was "already a commotion in the market and many people were milling around watching the fight between his uncle [the victim] and [appellant]." [11] Finally, appellant argues that Fernando was ten (10) feet away from the scene and could not have been an eyewitness to the crime.[12]

Appellant's contentions have no merit.

We agree with the trial court that "the prosecution has well-performed its duty to prove the guilt of the accused beyond reasonable doubt." [13] As observed by the trial court-

Between the bare denial of the accused and the positive identification and straightforward testimony of the witness Fernando Sanchez, a young boy, this Court is inclined to believe the prosecution's evidence. What is more is that the witness for the defense admitted that he saw the accused carrying a bladed weapon while standing two (2) meters away from the victim immediately after the incident happened. He further said that the victim and the accused were the only people who quarrelled (sic). All these give rise to the conclusion that the

accused perpetrated the crime resulting in the death of the victim. There is unanimity in the evidence pointing to the accused as the perpetrator of the offense as against his denial.[14]

The rule is that the positive and categorical assertions of witnesses generally prevail over bare denials.[15] We consider appellant's defense of denial of any participation in the crime viz-a-viz the testimonies of the other witnesses. Prosecution witness Fernando Sanchez positively identified appellant as the perpetrator of the crime. The defense's own witness Jaime Camacho, barangay chairman of Barangay 1, Zone 1, District 1 of the City of Manila testified seeing appellant wielding a 30-cm. long bladed weapon about two (2) meters from the fallen victim.

Significantly, appellant admitted being armed with a knife at the time of the incident, although he asserted that he was not of the habit of carrying a deadly weapon.[16]

Furthermore, the testimonies of the witnesses are supported by the physical evidence showing that the victim sustained a stab wound, which is borne out by the findings of the medico-legal officer. And, while it may be so that it was the two gunshot wounds sustained by the victim which were fatal, the medico-legal officer was of the opinion that the stab wound damaged the victim's internal organs and could have caused the victim's death.[17]

On appellant's attempt to dispute the prosecution's theory that he (appellant) conspired with his "henchmen" to kill the victim, asserting that he "could not afford to hire two henchmen." He was "only a jeepney driver whose income was not even enough for his family." [18]

A reading of the transcript of stenographic notes shows that the word "henchman" was used loosely to mean "alalay." In Tagalog, "alalay" means "helpful friend or companion," [19] thus not necessarily a subordinate. The transcript materially reveals that the witness was aided by an "English-Tagalog Interpreter," in answering the questions propounded to him by counsel. [20]

Appellant's further assertion that Fernando Sanchez could not have possibly seen and determined who were appellant's companions, in view of the hubbub at the scene of the incident, is belied by the following testimony. The witness testified as to knowing and recognizing the men to be appellant's associates, having seen them in each other's company on previous occasions. Fernando Sanchez testified, thus:

Q:

And how about the two persons whom you said earlier that they were the companions of Jose Chua, when was the first time you saw these person(s)?

A:

I had seen them previously.

Q:

Now, how do you know, how did you know that these two persons who shot and clubbed your uncle Pepito are the companions of Jose Chua?

A:

Because they were the accused's henchmen ('alalay')

Q:

Where did you see them before?

A:

Somewhere at Fulgeras St."

Fernando Sanchez recounted the acts of appellant and his two companions, thus:

Q:

Now, at the time when your uncle and Jose Chua were gearing to a fight, do you know what the two companions of Chua were doing?

A:

Yes, sir.

Q:

You said that the accused Jose Chua stabbed your uncle while he was lying down. Do you know how many stabs were made on him?

A:

Four times, sir.

Q:

Do you know where your uncle was hit by the four stabs?

A:

Yes, sir.

Q:

Where, will you demonstrate on your body, Fernando?

A:

(Witness pointing to his head.) When Jose Chua was about to stab my uncle, my uncle parried it with his thorax[21] (witness pointing to his left and right forearm)."

Q:

How about the other stabbed (sic) wounds?

A:

Witness pointing to his left leg.

Q:

You mentioned earlier that aside from Jose Chua, he has two companions, isn't it?

A:

Yes, sir.

Q:

Do you know what did these two companions do to your uncle, if any?

A:

Yes, sir.

Q:

And what did these two companions do?

A:

While Jose Chua was stabbing my uncle, one of the two companions suddenly shot my uncle.

Q:

How about the other one, what did he do, if he did anything?

A:

And the other one clubbed him.

Q:

Now, Fernando, do you know what came first, the stabbing by Jose Chua of your uncle or the shooting by the other companion of Jose Chua and the clubbing of the other companion of Jose Chua?

A:

The stabbing came first, then the shooting and then the clubbing, sir.

Q:

Do you know also Fernando, how the intervals of the stabbing, the shooting and the clubbing?

A:

They were successively inflicted, sir.[22]

The foregoing testimony establishes conspiracy-- that the acts of appellant and his two companions collectively and individually demonstrates the existence of a common design towards the accomplishment of the same unlawful purpose.[23] Each malefactor did his part in the crime, which part, though apparently independent, was in fact connected and in cooperation with each other, indicating a closeness of their personal association and concurrence of sentiments.[24] The rule is then that the liability of the conspirators is collective, and each participant will be equally responsible for the acts of others.[25]

The corollary rule is that where a conspiracy has been established, evidence as to who among the malefactors rendered the fatal blow is not necessary. All the conspirators are liable as co-principals regardless of the intent and character of their participation, because the act of one is the act of all.[26]

Appellant finally contends that, granting arguendo "that the facts are true, [appellant] cannot be convicted of the crime of Murder as the prosecution failed to prove the qualifying circumstance of treachery and evident premeditation." [27] Appellant asserts that there can be no evident premeditation because appellant did not even know the victim before the shooting incident.[28] Further, he contends that there was no treachery, as it was the victim who started the aggression and provoked the fight and he (the victim) should have been forewarned of a possible reprisal.[29]

We find no treachery. 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." [30] No

evidence was presented to show that the appellant and his companions deliberately adopted a mode of attack intended to ensure the killing of Pepito Lopez, without the victim having the opportunity to defend himself.

Furthermore, prior to the killing, appellant and the victim Pepito Lopez were circling each other and were in a fighting stance, or in the words of witness Fernando Sanchez, "naggigirian." [31] The victim thus could be said to have had forewarning and anticipation of the aggression from appellant and his companions, [32] allowing him a chance to defend himself. While the killing itself appears to have occurred on sudden impulse, it was preceded by acts of appellant showing hostility and a heated temper that indicated an imminent attack and should have put the deceased on guard. [33]

The situation that the victim, at the time of the assault, was prostrate on the ground, after having accidentally slipped, is of no moment when considering the presence of treachery. Suddenness of attack does not, of itself, suffice to support a finding of treachery, so long as the decision to kill was made at that instant and the victim's helpless position was accidental. [34]

The prosecution also did not prove the presence of the elements of evident premeditation. For evident premeditation to be appreciated, the following elements must be present: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to their determination to commit the crime; and (3) the lapse of sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of the act. [35] The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. [36]

Accordingly, for failure of the prosecution to prove a circumstance to qualify the killing to Murder, appellant may only be convicted of Homicide.

We however consider the aggravating circumstance of recidivism against appellant. While as a rule, it is necessary to allege recidivism in the information and to attach thereto certified copies of the sentences rendered against the accused, such circumstance may be considered if the accused does not object to the presentation of evidence of the fact of recidivism. [37]

The prosecution presented in evidence the record from the Bureau of Corrections, Iwahig Prison and Penal Farm, Palawan stating that appellant was incarcerated at that facility, having been convicted of Murder in Criminal Case No. CC-VI-71-70 and imposed the penalty of six years and one day, as minimum, to twelve years and one day, as maximum. On June 12, 1971, the President of the Philippines commuted the sentence to three years, as minimum, to six years, as maximum. Appellant was released on parole on September 13, 1972. Appellant did not object to the presentation of this evidence and even admitted that the same. [38]

Under Article 249 of the Revised Penal Code, Homicide is punishable by reclusion temporal. The existence of the aggravating circumstance of recidivism calls for the imposition of the penalty in its maximum period. Applying the Indeterminate Sentence Law, the minimum term shall be within the range of the next lower penalty to that prescribed by the Revised Penal Code, or prision mayor. Accordingly, appellant shall suffer the indeterminate penalty of ten (10) years and (1) one day of prision mayor, as minimum, to twenty (20) years of reclusion temporal as maximum.

The trial court also awarded the heirs of the victim the following: "indemnity x x x in the amount of P50,000.00 as actual damages for the death of the deceased; P50,000.00 as moral damages and P30,000 as exemplary damages."

No evidence whatsoever was presented to support the award of actual damages. The rule is that actual or

compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty.[39] We likewise delete the award of moral damages, absent factual basis. While no proof of pecuniary loss is necessary, it is essential that the claimant should satisfactorily provide factual basis for the alleged moral injury.[40]

The award of exemplary damages is warranted under Art. 2230 of the Civil Code of the Philippines, considering the presence of the aggravating circumstance of recidivism.[41]

We also order appellant to pay civil indemnity to the heirs of the victim in the amount of P50,000.00, this being without need of further proof other than the fact that appellant committed the crime.[42]

WHEREFORE, the appealed decision of the Regional Trial Court of Manila, Branch 12 in Criminal Case No. 90-83644 is hereby MODIFIED as follows: Accused-appellant Jose Chua is declared GUILTY beyond reasonable doubt of the crime of Homicide and is hereby sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to twenty (20) years of reclusion temporal as maximum, and to pay the heirs of the victim Pepito Lopez the amount of P50,000.00 as civil indemnity and P30,000.00 as exemplary damages.

SO ORDERED.

Romero, and Purisima, JJ., concur
Narvasa, C.J., (Chairman), On Official leave.

[1] Dated May 8, 1990.

[2] Record, p. 1.

[3] Hearing of June 4, 1990

[4] RTC Decision, pp. 2-7; Records, pp. 148-153.

[5] Id., at 12 & 158.

[6] Rollo, p. 38.

[7] Appellant's Brief, p. 8; Rollo, p. 45.

[8] Id., at 10 & 47.

[9] Id., at 9 & 46.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Decision, p. 11; Record, p. 157

[14] Id., at 7 & 153.

[15] *People v. Apongan*, 270 SCRA 713 (1997) citing *People v. Cayanan*, 315 Phil. 23 (1995).

[16] TSN, February 25, 1991 p. 5.

[17] TSN, November 19, 1990, pp. 4 and 6.

[18] See note 10.

[19] TAGALOG-ENGLISH DICTIONARY, LEI JAMES ENGLISH, 1986 ed.

[20] TSN, December 10, 1990 p. 2.

[21] Should be "two arms."

[22] TSN, December 19, 1990, p. 3.

[23] *People v. Javier*, 269 SCRA 181 (1997).

[24] *People v. Layno*, 264 SCRA 558 (1996) citing *People v. Miranday*, 312 Phil. 709 (1995).

[25] *People v. Rostata, Jr.*, 218 SCRA 657 (1993).

[26] *People v. Salison*, 253 SCRA 758 (1996); *People v. Yabut*, 226 SCRA 715 (1993).

[27] *Rollo*, p. 47.

[28] *Id.*, at 48.

[29] *Id.*, at 49.

[30] Art. 14, par. 16, Revised Penal Code of Philippines.

[31] TSN, December 10, 1990, p. 2.

[32] *People v. Demonteverde* G.R. No. 124978, May 19, 1998 citing *People v. Compendio*, 258 SCRA 254 (1996); *People v. Hubilla*, 252 SCRA 471 (1996).

[33] *People v. Demonteverde*, *supra*, citing *People v. Macalino*, 177 SCRA 185 (1989) and *People v. Ruiz*, 110 SCRA 155 (1981).

[34] *People v. Andesa*, 55 SCRA 245 (1974) citing *People v. Macalisang*, 130 Phil. 728 (19).

[35] *People v. Bautista*, G.R. No. 111149, September 5, 1997; *People v. Quinao*, 269 SCRA 495 (1997).

[36] *People v. Caisip*, G.R. No. 119757, May 21, 1998, citing *People v. Palomar*, G.R. No. 108183-85, August 21, 1997.

[37] *People v. Martinada*, 194 SCRA 36 (1991).

[38] TSN, February 25, 1991 p. 7.

[39] *People v. Fabrigas, Jr.*, 261 SCRA 436 (1996) citing *People v. Wenceslao*, 212 SCRA 56 (1992); *People v. Rosario*, 246 SCRA 658 (1995).

[40] *People v. Santos*. G.R. No. 117873, December 22, 1997, citing *Kierulf v. Court of Appeals*, G.R. No. 99301, March 13, 1997; *People v. Serzo*, G.R. No. 118435, June 20, 1997; *People v. Zamora*, G.R. No. 101829, August 21, 1997; *People v. Sol*, G.R. No. 118504, May 7, 1997; *People v. Villamor*, G.R. No. 111313-14, January 16, 1998.

[41] Art. 2230, Civil Code of the Philippines; *People v. Bergante*, G.R. Nos 120369-70, February 27, 1998; *People v. Esguerra*, 256 SCRA 659 (1996); *People v. Manero, Jr.* 218 SCRA 85 (1993).

[42] People v. Tulop, et al., G.R. No. 124829, April 21, 1998; People v. Caballes, G.R. No. 102723-24, June 19, 1997.

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