

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO VILLANUEVA Y FAUSTINO, ACCUSED-APPELLANT.

G.R. No. 122746. January 29, 1999

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

In a decision[1] rendered in Criminal Case No. 93-127826, the Regional Trial Court of Manila, Branch 28, found accused-appellant MARIO VILLANUEVA y FAUSTINO (hereafter MARIO) guilty beyond reasonable doubt of murder as charged, and sentenced him to suffer the penalty of reclusion perpetua and to pay P50,000.00 as death indemnity, P53,800.00 as actual damages, P1,663,668.00 for the loss of earning capacity of the victim, P50,000.00 as moral damages, and the costs of suit.

The Information charged MARIO with murder allegedly committed as follows:

That on or about September 19, 1993 in the City of Manila, Philippines, the said accused conspiring and confederating with one whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, attack, assault and use personal violence upon one JOAQUIN NACIONAL Y BANEZ by then and there shooting the latter with an unknown caliber revolver hitting him at the back of his right ear, thereby inflicting upon the said Joaquin Nacional y Banez a mortal gunshot wound which was the direct and immediate cause of his death.[2]

MARIO pleaded not guilty upon his arraignment on 17 December 1993.[3]

Witnesses for the prosecution were Adelfa Nacional, Bienvenida Nacional, PO3 Rosales M. Fernandez, PO3 Ireneo Manalili and Dr. Maximo Reyes. Witnesses for the defense were MARIO, Domingo Peliño, Eva Torio and Edmundo Ventura.

Adelfa Nacional, the wife of Joaquin Nacional, the victim, testified that on 19 September 1993, at around 10:00 p.m., in Area C, Parola Compound, Tondo, Manila, she fetched Joaquin from a wake. Before proceeding home, they first bought cigarettes from a store owned by Joaquin's sister, Bienvenida Nacional. While they were buying cigarettes, Adelfa was about one arm's length to the left of Joaquin. She noticed two persons walk behind them. One of the two, whom she identified as MARIO, moved to about a foot and a half behind her husband, pulled out a gun from his waist, pointed the gun below her husband's right ear and shot her husband. MARIO and his companion then ran towards a nearby alley. Joaquin fell to the ground. Adelfa shouted for help. According to Adelfa, the crime scene was illuminated by a fluorescent lamp.[4]

Adelfa recognized MARIO because she often saw him at the plaza, which was near Adelfa's house and which was a usual venue for cockfights. She remembered that about a year before the incident, she saw her husband in front of their house having an "altercation" with MARIO over a cockfight.[5]

Adelfa again saw MARIO on the night of 22 September 1993 at the police station after she and Bienvenida

Nacional were informed that MARIO had been apprehended. From a line-up of eight persons, Adelfa identified Mario as her husband's killer.[6]

Adelfa spent P32,000.00 for her husband's coffin and P5,000.00 during the wake. Other expenses related to her husband's funeral were paid for by her mother-in-law.

Adelfa further testified that her husband earned about P2,500.00 a week from selling fish, and that because of his death, she suffered grief and wounded feelings, which could not "be paid in terms of money." [7] Moreover, she also lost someone who could help her.[8]

The prosecution wanted to present Yolanda Nacional, the victim's mother, to prove the amount spent for funeral expenses, but the defense stipulated that the victim's heirs spent P53,800.00 for the purpose.[9]

Bienvenida Nacional, the victim's sister, corroborated Adelfa's testimony as to the circumstances attending the commission of the crime, but as viewed from a different angle since Bienvenida was positioned about one arm's length in front of the victim. She tried to help lift her brother after he was shot, but in her nervousness and fear from seeing blood flow from her brother's head, she was unaware that she had already run to the police station to get help. At the station, she had the incident recorded in the police blotter and gave a physical description of MARIO and his companion. She was informed on 22 September 1993 that MARIO had been apprehended.[10]

Bienvenida surmised that the killing of her brother Joaquin was due to an altercation between him and MARIO over a bet in a cockfight. During that altercation, which occurred at the plaza some ten days before the incident, Bienvenida pacified the two and told her brother to go home, and the latter obeyed. She described her brother as the calmer one between the two, and that during the altercation, he answered MARIO's grave and serious curses with less grave curses.[11] This altercation was different from that reported by Adelfa which occurred a year before the crime.

PO3 Rosales M. Fernandez arrested MARIO on the night of 22 September 1993, after following a lead provided by another officer. Later that night, Fernandez arranged a police line-up where Adelfa Nacional pointed out MARIO as her husband's killer. Fernandez divulged that MARIO was not assisted by counsel at the line-up, and admitted that Edgar Rioferio was also arrested but the inquest fiscal ordered his release.[12]

PO3 Ireneo Manalili received Bienvenida Nacional's report on the night of the incident and entered it in the police blotter.[13] With Bienvenida, he went to the crime scene to investigate.

Dr. Maximo Reyes, National Bureau of Investigation Medico-Legal Officer, conducted the post-mortem examination on the victim. His findings were summarized in an autopsy report[14] as follows:

Cyanosis, lips and nailbeds.

Contused abrasions: zygomatic area, right 2.0 x 2.0 cms.; mandibular area, medial aspect, 1.0 x 0.5 cm.

Gunshot wound, entrance, ovaloid, 0.7 x 0.8 cm., contusion collar widest at its infero-lateral border, edges inverted with area of smudging and tattooing, 5.0 x 4.0 cms., located at the scalp, post-auricular area, right, 3.0 cms. behind and 0.5 cm. above the right external auditory meatus, directed forwards, upwards and medially, involving the scalp, fracturing the right temporal bone, into the cranial cavity, penetrating the right temporal lobe at the brain where a deformed bullet was lodged and subsequently recovered.

Other visceral organs, congested.

Stomach, contains small amount of rice and other partially digested food particles.

CAUSE OF DEATH: GUNSHOT WOUND AT THE HEAD.

The fatal bullet entered from behind the victim's right ear with an upward trajectory, thus it was retrieved in the right temporal area. There was smudging or tattooing at the bullet's entry point, indicating that the muzzle of the gun was between three to six inches away from said entry point. There were abrasions on the right zygomatic area, that is, below the eye, indicating that the victim fell to the ground on his face with force.[15]

Domingo Peliño, the first defense witness, testified that he and MARIO were neighbors in Parola Compound, Tondo. On 19 September 1993, between 9:00 to 10:00 in the evening, Peliño went to MARIO's house to ask for help in replacing a fuse in Peliño's fuse box at his house. MARIO was not at home, however, because according to his wife, MARIO was in Malinta, Caloocan City. After the incident in question, Peliño heard rumors from his neighbors that MARIO was involved in said incident; and after he learned of MARIO's arrest, Peliño went to police headquarters to ask MARIO about the killing. MARIO said that he had nothing to do with the killing. Peliño then executed an affidavit attesting to MARIO'S innocence, which he filed with the City Prosecutor's Office.[16]

Eva Torio testified that she knew MARIO as the brother of her neighbor and friend Nilda. On 19 September 1993, at about 2:00 p.m., MARIO brought carabao skin to the Torio residence at Sitio Gitna, Kaybiga, Caloocan City, for Eva's husband's birthday party. From 2:00 to 4:00 that afternoon, MARIO, one Boyet, and Eva's husband prepared and cooked the carabao skin. The group brought five cases of beer then engaged in a drinking session. She stayed with the group, although she did not join in the drinking but only sat beside her husband. She slept at 10:30 p.m. while the three were still drinking. The next morning, at around 6:00 p.m., Torio went to Nilda's house where MARIO slept. She asked him to build a fusebox for her, which he completed between 8:00 to 9:00 that morning.[17]

Edmundo Ventura testified that he joined in the drinking session, which lasted until midnight. MARIO never left the group except when he took his dinner, but he returned shortly thereafter. When the drinking session ended, Ventura left with MARIO and a certain Rony Macapobre, and Ventura saw MARIO enter Nilda's house.[18]

MARIO reiterated the story told by the defense witnesses. The trial court summarized his testimony as follows:

[T]hat on September 19, 1993, at 10:00... in the evening, he was in Sitio Gitna, Kaybiga, Kalookan City; that he left his house that day at about 10:30 in the morning, passed by Divisoria and bought carabao and cow skins or hides, which he bought with him to Gitna to be cooked or made into kilawin as pulutan in the house of Jun Torio; that they finished cooking at 4:00 p.m. and after they had bought beer they started drinking up to 12:00... midnight; that he did not leave Sitio Gitna, Kaybiga, Kalookan City; and that he went home to his house in Area C, Parola Compound, Tondo, Manila, on September 20, 1993, at 11:00... in the morning.[19]

Additionally MARIO explained that the victim was once a friend of his but Adelfa Nacional accused him of killing the victim because sometime in 1992, "in a highway near [MARIO's] place," the victim lost P20.00 to MARIO in a game of cara y cruz.[20] The victim's family also harbored ill feelings towards MARIO because he refused to testify for Joaquin Nacional in two criminal cases, including one for the killing of a son of MARIO's compadre, where Joaquin Nacional was one of the accused.[21]

In its decision[22] of 14 June 1995 the trial court gave full faith and credence to the testimonies of the witnesses for the prosecution, describing them as candid, straightforward and frank. The trial court took judicial notice of the volume of traffic from Caloocan City to Tondo, and concluded that it was not impossible for MARIO to have been at the scene of the crime at the time of its commission. The trial court likewise dismissed MARIO's contention that the Nationals wanted to get even with him for his refusal to testify for Joaquin Nacional in the criminal cases filed against the latter. The court noted that these cases were filed several years before the victim

was even married, hence MARIO's refusal to testify was inconsequential.

The trial court determined that there was treachery in the killing of Joaquin Nacional since the attack came from behind the victim with a concealed weapon which was suddenly fired at the victim. The victim was completely unaware of the attack and was thus totally defenseless. The court then decreed as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of murder in the shooting of Joaquin Nacional y Banez, the accused, Mario Villanueva, is hereby sentenced to suffer the penalty of reclusion perpetua, the medium period of the penalty prescribed for murder under Article 248 of the Revised Penal Code, there being no mitigating or aggravating circumstance. The duration of said penalty shall be that provided in Article 27 of the Revised Penal Code before it was amended by R.A. No. 7659.

The accused is ordered to indemnify the heirs of Joaquin Nacional in the sum of P50,000.00; to pay the widow, Adelfa Nacional, and the mother, Yolanda Nacional, actual damages in the sum of P53,800.00; to pay the heirs of Joaquin Nacional for the loss of earning capacity of the said deceased in the sum of P1,663,680.00; and to pay moral damages to the widow, Adelfa Nacional, in the sum of P50,000.00; and finally, the accused must pay the costs.

SO ORDERED.

The award for loss of earning capacity was computed in accordance with the decision in *Monzon v. Intermediate Appellate Court*.^[23] His Motion for reconsideration^[24] having been denied by the trial court in its order^[25] of 18 September 1995, MARIO interposed this appeal.

In his Appellant's Brief MARIO claims that the trial court erred in:

1.

not giving credit to the accused-appellant's testimony and that of his witnesses, and in disregarding his defense of alibi;

2.

giving credence to the testimonies of the two prosecution witnesses, who are related to the victim; and in holding that the accused-appellant was positively and spontaneously identified by these prosecution witnesses; and

3.

concluding that the guilt of the accused for the crime of murder has been established by evidence beyond reasonable doubt.

As to the first error assigned, MARIO scores the trial court for venturing into conjecture, particularly in the following portion of the decision:

Sitio Gitna, Kaybiga, Kalookan City is located midway between, and lies along Gen. Luis Street which joins Novaliches and the Valenzuela Exit of the North Expressway. General Luis St. is a two lane road where many vehicles, private and public, pass everyday, but as the day wanes and advances into the night the traffic volume lessens at between the hours of 9:00 and 11:00 and travel is fast either way to Novaliches or to the North Expressway, such that in less than an hour, one can get to Tondo, Manila, whether through Novaliches along Quirino Highway to Balintawak, or from Valenzuela Exit along the North Expressway to Balintawak, then EDSA to Grace Park, Kalookan City, then to J. Abad Santos Avenue to Tondo. Of these facts this court can take judicial notice. And in a taxicab, of which the accused by his own testimony, is a driver, the travel time will be much less. It was not physically impossible for the accused to be at the scene of the shooting of Joaquin Nacional.^[26]

where the trial court assumed that traffic from MARIO's original location to the crime scene was light and that he could readily avail of means of transportation.

MARIO insists on his testimony that he was in Caloocan City in the middle of a drinking spree, which was corroborated by a number of defense witnesses. MARIO claims that he and his witnesses were candid, straightforward and frank, and considering that the corroborating witnesses were neither related to him nor good friends of his, they had no reason to lie.

Although MARIO admits it could have been possible for him to be at the crime scene, he asserts that the prosecution failed to establish this possibility as fact by proof beyond reasonable doubt.

Anent the second assigned error, MARIO expresses doubts that prosecution witnesses were able to positively identify him as the killer of the victim. In the first place, no ocular inspection of the crime scene was ever conducted, hence lighting conditions, which the trial court concluded were sufficient for a positive identification, were not definitely determined. He adds that even if a place were lit, "light casts shadows and can play tricks with a person's sight." Also, MARIO was shorter than the victim, hence it was possible for the victim to have blocked the view of Bienvenida and prevented her from clearly seeing the assailant. Moreover, Adelfa Nacional's identification was flawed since it was merely instilled in her mind by Bienvenida Nacional as shown by Adelfa's testimony:

Q

Do you still remember Madam witness, what did you and your sister-in-law do if any, after your husband was shot?

A

Yes, sir.

Q

And what did she do if any?

A

She also cried.

Q And did she tell you anything, while you were embracing your husband?

A

Yes, sir. According to her, it was Mario who shot my husband.[27]

MARIO further claims that Adelfa's testimony was less than candid and straightforward as illustrated by the following segment:

Q

And then Mrs. witness, while he [Joaquin Nacional] was then buying cigarettes, he was standing about one arm's length, what happened next?

A Somebody arrived and shot my husband at the back of the lower portion of his right ear sir.[28]

and argues that if Adelfa positively identified him as the gunman, she should have forthwith stated his name instead of simply referred to him as "Somebody."

MARIO also questions his arrest three days after the commission of the crime. If he was indeed positively identified, he should have been immediately arrested. Additionally, at the police line-up on 24 September 1993, Adelfa identified Edgar Rioferio y Medano as MARIO's companion on the night of the crime, yet Rioferio was released by the police.

On the third assigned error, MARIO claims the prosecution presented no hard evidence, such as a paraffin test, fingerprints, blood samples, and clothing, to indubitably link him to the crime. The prosecution merely had and relied on the prosecution witnesses' testimony, which MARIO claims was insufficient to dispel reasonable doubt. In sum he assesses the prosecution's evidence as circumstantial and conjectural.

In the Appellee's Brief, the Solicitor General belittles MARIO's defense of alibi, and asserts that for alibi to prosper, an accused must prove not only that he was not at the crime scene at the time of the commission of the crime, but that it was absolutely impossible for him to have been there at that time. Furthermore, assuming that defense witnesses were telling the truth that they were drinking with MARIO, none of them categorically admitted that they kept an eye on him at all times from 4:00 p.m. to 12:00 midnight of 19 September 1993. Hence, MARIO was unable to demonstrate the feasibility of his alibi.

On MARIO's contention that the eyewitnesses' relation to the victim clouded their reliability, the Office of the Solicitor General replies that relationship is not equal to bias; on the contrary, a witness' relationship with the victim would deter him or her from indiscriminately implicating anybody in the crime. As to MARIO's comment on the lighting conditions at the crime scene, responds that a witness' familiarity with another person makes it easy for the former to identify the latter. Adelfa and Bienvenida Nacional were not only familiar with MARIO but they also knew him quite well, thus making it easy for them to identify him. The point as regards MARIO's height was likewise inconsequential since two eyewitnesses clearly recognized and positively identified him as the assailant. If at all, that MARIO was shorter than the victim conformed with the evidence that the fatal bullet took an upward trajectory.

As to Bienvenida's reference to MARIO in her testimony as "Somebody," the Office of the Solicitor General asserts that it is not necessary for the name of the accused to be specified by a witness in an affidavit or testimony since victims of crimes can not always identify their assailants by name.

Lastly, the Office of the Solicitor General argues that although the police waited for three days before arresting MARIO, said action or inaction was the fault of the authorities and not a factor that could affect the eyewitnesses' credibility.

There being sufficient evidence to convict MARIO, the Office of the Solicitor General dismisses as unnecessary the other evidence that MARIO seeks. If presented these pieces of evidence would only be corroborative of the eyewitnesses' positive identification of MARIO as the assailant. At any rate, choosing which evidence to present to the trial court is the prosecutor's prerogative.

We find no merit in this appeal.

Alibi, upon which MARIO's defense hinges upon, is the weakest of defenses. For alibi to prosper, an accused must prove that not only was he absent at the scene of the crime at the time of its commission, but also that it was physically impossible for him to be so situated at the said instance.[29] MARIO set out to prove his alibi by claiming that he was in Caloocan City engaged in a drinking spree from 2:00 p.m. to midnight. But as the Office of the Solicitor General pointed out, MARIO failed to show that it was physically impossible for him to have been at the crime scene at the time of the commission of the crime. None of the corroborating witnesses kept so close a watch on MARIO as to be able to account for his whereabouts during the entire period from 2:00 p.m. to 12:00

midnight: Eva Torio admitted that she did not know MARIO's whereabouts from 10:30 p.m. of 19 September 1993 to 6:00 a.m. the following day;^[30] Edmundo Ventura admitted that MARIO momentarily left the drinking session and the Torio residence to take dinner;^[31] and Domingo Peliño revealed that a trip from Malinta, where MARIO allegedly was on 19 September 1993, to Manila would take only half an hour, and at any rate Peliño did not personally know that MARIO was in Malinta.^[32]

We acknowledge that the trial court improperly took judicial notice of the travel time from Caloocan City to Tondo, since the same can not be considered a law of nature, nor was it shown to be capable of unquestionable demonstration or to be of public knowledge, nor could it have been known to the trial judge due to the nature of his judicial functions^[33] But the point remains that MARIO failed to prove that he could not have been at the crime scene at the time of the commission of the crime. On the contrary, he even admitted that it was possible for him to be at the scene of the offense at the time of its commission, but he was confident that the prosecution failed to disprove this circumstance by proof beyond reasonable doubt. MARIO's confidence betrays a misconception of which party has the burden of proving alibi. It is settled that alibi is an affirmative defense^[34] and, considering that it is easy to concoct, when an accused relies thereon, he has the burden of proving it, i.e., that he could not have been at the scene of the crime at the time of its commission.^[35]

MARIO failed in this task, as in fact he relinquished his duty to the prosecution, which, in turn was not bound to perform the same for him.

The already feeble defense of alibi further weakens in the face of positive identification of the accused. Equally cognizant of this canon, MARIO sought to cast doubt on his positive identification by the eyewitnesses, speculating as to the presence of shadows and the relative positions of the victim and the assailant. These speculations are, however, unworthy of consideration and must remain mere speculations, for the eyewitnesses categorically stated that they saw MARIO shoot the victim.

MARIO also misunderstood Adelfa when he interpreted the latter's testimony to mean that Bienvenida suggested to her that MARIO shot the victim. Construing Adelfa's testimony in its entirety, and not merely taking a portion out of context, we find that Bienvenida merely confirmed what Adelfa saw. In fact, on cross-examination, Adelfa insisted that she saw MARIO shoot her husband, thus:

Q:

Now, while you were embracing your husband who was lying on his back and you were crying profusely and continuously someone from behind said that a certain "Mario" shot your husband?

PROSECUTOR

Again, Your Honor, the witness already said that she cannot remember what happened after the shooting.

ATTY LEYBLE

My question, Your Honor, is that since she remembered that there were many people around and at the time she was crying if she heard somebody saying that it was "Mario" who shot her husband, Your Honor.

COURT

Let the witness answer.

WITNESS

A: I did not hear anything. I saw it myself.^[36]

That Adelfa referred MARIO as “Somebody,” instead naming him, is of no moment. One must consider that the examining counsel was taking Adelfa step by step through her story, and the question propounded to her did not require that she immediately name the assailant. But earlier in her testimony Adelfa identified MARIO by name because the questions asked her were as follows:

Q

What was the cause of death of your husband?

A He was shot sir.

Q By whom?

A By Mario Villanueva sir.[37]

At any rate then, Adelfa identified “Somebody” as none other than MARIO.

We fail to see how the arrest of MARIO three days after Adelfa reported the crime to the police could mean that Adelfa failed to identify MARIO. Clearly a third party’s action or inaction cannot affect a witness’s credibility.

MARIO’s reliance on the transcripts of the testimonies, which he quoted out of context, has led him to unfounded conclusions and justifies our well-ingrained rule that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[38] For this case boils down to an appraisal of the credibility of the witnesses, and we cannot undertake the assessment with accuracy when all we have before us are the cold, unspeaking records of the case; otherwise we would make the same mistakes that MARIO committed. Instead, we rely on the evaluation by the trial judge, who had the advantage of directly observing witness’ deportment and manner of testifying, as well as having certain potent aids in understanding and weighing the testimony of witnesses, such as the emphasis, gesture, and inflection of the voice of the witnesses while on the stand.[39]

We see no oversight on the part of the trial court which would justify nullifying its determination of the credibility of the prosecution witnesses. Not even MARIO’S allegation of bias against the eyewitnesses due to their relationship to the victim persuades us. Relationship by itself does not give rise to a presumptions of bias or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of a witness. 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, otherwise, the guilty would go unpunished. A witness’ relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse thereof somebody other than the real culprit.[40]

Regarding MARIO’s refusal to testify for Joaquin Nacional in the criminal cases against the latter, the Nationals could not have borne any ill motive against MARIO due to the same, because said cases were in fact dismissed, even without MARIO’s testimony. Without any ill motive to encourage them to falsely testify against MARIO, we find the testimonies of the eyewitnesses to be credible and trustworthy, consistent with the trial court’s assessment of these witnesses.

Because credible witnesses had already demonstrated MARIO’s culpability, there was no need to present further evidence linking him to the crime. There is no requirement of a certain quantity of evidence before one may be justly convicted for an offense. The only requisite is that the prosecution prove the accused’s guilt beyond reasonable doubt. The prosecution in the instant case successfully accomplished its task.

Finally, the trial court correctly held that there was treachery in this case. 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 or specifically to ensure its execution, without risk to himself arising from the defense which the offended party might make.[41] The victim was shot from behind by one who proceeded stealthily and quickly. The victim was not aware of any impending attack against his person, and even Adelfa Nacional who had seen MARIO approach her husband was surprised by the suddenness with which MARIO shot her husband. Under these circumstances, the victim clearly was deprived of an opportunity to defend himself, thus ensuring the execution of the offense without risk to MARIO. Hence, there was treachery.

There is, however, the matter of lost income awarded by the trial court in favor of the heirs of the victim. Although the award was not objected to by MARIO, we feel the same is unjustified, hence must be deleted. In fixing the award, the trial court relied on the unsubstantiated and incomplete testimony of Adelfa Nacional, specifically the following:

Q

Do you have children by Joaquin Nacional?

A Yes, Your Honor.

Q How many?

A Two, Your Honor.

Q When Joaquin Nacional was alive who support it?

A Me, sir, I was selling fish then.

Q Joaquin Nacional was not supporting your children?

A Sometimes Your Honor, he helps me in vending fish.

Q Do you know what was his income more or less – per month?

A Sometimes Your Honor, we earned P5,000.00 a week.

Q How much was he earned – share of Joaquin Nacional in that earning?

A P2,500.00, Your Honor.

Q Was that his regular income?

A Yes, Your Honor.

x x x

FISCAL VIOLA:

Q By the way Mrs. Witness, when your husband died – when he was stabbed [sic] how old was he at that time?

A 28 years old, sir.

Q And what was his physical condition at that time?

A He was healthy, sir.

Q And do you think with that present condition physical condition up to what age can he still work to provide finance for your family?

ATTY. LEBLE:

I think the witness is incompetent, Your Honor.

FISCAL VIOLA:

She is competent Your Honor, she is the wife, Your Honor.

COURT:

At any rate there is a rule for that provided by the Supreme Court.[42]

The rule alluded to by the trial judge dates back to *Alcantara v. Surro*,[43] where the Court, using the American Experience/Expectancy Table of Mortality or the Actuarial or Combined Experience Table of Mortality, estimated the life span of an average human being to be up to 80 years old, and with that in mind computed the estimated income to be earned by the deceased had he or she not been killed. But the compensation for lost income is in the nature of damages,[44] and as such requires due proof of the damage suffered.[45] For lost income due to death there must be unbiased proof of the deceased's average income. Adelfa gave only a self-serving, hence unreliable, statement of her husband's income. Also, the award for lost income refers to the net income of the deceased, that is, his total income less his average expenses.[46] In the instant case, no proof of the victim's expenses was presented, thus there can be no reliable estimate of his lost income.

WHEREFORE, the decision in Criminal Case No. 93-127826 by Branch 28 of the Regional Trial Court of Manila, rendered on 14 June 1995, finding accused-appellant MARIO VILLANUEVA y FAUSTINO guilty beyond reasonable doubt of MURDER is hereby AFFIRMED, with the modification that the award for the loss of earning capacity of the deceased is deleted. The rest of the decision stands.

Costs against accused-appellant.

SO ORDERED.

Melo, Kapunan, Martinez, and Pardo, JJ., concur.

[1] Original Record (OR) Vol. I, 147-163; Rollo, 22-38. Per Judge Antonio L. Descallar.

[2] OR Vol. 1, 1; Rollo, 5.

[3] OR Vol. I, 26.

[4] TSN, 6 January 1994, 6-28, 38.

[5] *Ibid.*, 35-37; TSN, 3 February 1994, 3-5.

[6] TSN, 6 January 1994, 29-35.

[7] TSN, 3 February 1994, 7-14.

[8] The transcript of stenographic notes reports her exact statement as "Nagbago ako dahil wala ng tumutulong sa akin." TSN, 3 February 1994, 13.

[9] TSN, 10 February 1994, 59-61.

[10] TSN, 24 February 1994, 7-33.

[11] TSN, 24 February 1994, 33-34; TSN, 3 March 1994, 10-12, 20-27, 29-31.

[12] TSN, 14 April 1994, 8-34; TSN, 21 April 1994, 6-7.

[13] TSN, 21 April 1994, 8-21.

[14] Exh. "L."

[15] TSN, 12 May 1994, 5-8.

[16] TSN, 14 May 1994, et seq.

[17] TSN, 23 August 1994, 5-36.

[18] TSN, 8 September 1994, 4-14.

[19] Decision, 10-11; OR Vol. I, 156-157; Rollo, 31-32.

[20] MARIO made it clear that Adelfa Nacional did not witness this cara y cruz incident, hence MARIO and Joaquin were involved in at least three altercations: one reported by Adelfa, another witnessed by Bienvenida, and another one due to a game of cara y cruz.

[21] TSN, 17 March 1995, 17-19; TSN, 21 April 1995, 10-12; 25 April 1995, 8-30.

[22] Supra note 1.

[23] 169 SCRA 760 [1989].

[24] OR Vol. I, 165-170.

[25] Id., 178.

[26] Decision, 14-15; OR Vol. I, 160-161; Rollo, 35-36.

[27] TSN, 10 February 1994, 17.

[28] TSN, 6 January 1994, 20-21.

[29] *People v. Quijada*, 259 SCRA 191, 214 [1996]; *People v. Balamban*, 264 SCRA 619, 631 [1996].

[30] TSN, 23 August 1994, 35.

[31] TSN, 24 February 1995, 28.

[32] TSN, 14 July 1994, 27-28.

[33] RULES OF COURT, Rule 129, secs. 1-2.

[34] VII VICENTE J. FRANCISCO, *EVIDENCE (PART II)* 41-42 (1973 ed.).

[35] *People v. Evardo*, 216 SCRA 159, 169 [1992]; *People v. Cortes*, 226 SCRA 91, 100 [1993]; *People v. Tañeda*, 266 SCRA 34, 40 [1997]; *People v. Andal*, 279 SCRA 474, 491-492 [1997]. Self-defense has been likened to alibi because both are easily concocted, and because of this ease, the burden of proving the defense is on the accused. (*People v. Labinia*, 115 SCRA 223, 231 [1982]; *People v. Marciales*, 166 SCRA 436, 442 [1988]). See also the concurring opinion of Justice Street in *United States v. Olais*, 36 Phil. 828, 830 [1917], for a brief explanation on the burden of the prosecution and the defense as regards alibi.

[36] TSN, 10 February 1994, 14-15.

[37] TSN, 6 January 1994, 8.

[38] *People v. Excija*, 258 SCRA 424, 439 [1996]; *People v. Quijada*, 259 SCRA 191, 212-213 [1996]; *People v. Villegas*, 262 SCRA 314, 322 [1996]; *People v. Bayani*, 262 SCRA 660, 678-679 [1996].

[39] *People v. Lorenzo*, 240 SCRA 624, 635 [1995]; *People v. Malunes*, 247 SCRA 317, 324 [1995].

[40] *People v. Enciso*, 223 SCRA 675,686 [1993]; *People v. Viente*, 225 SCRA 361, 368-369 [1993]; *People v. Silvestre*, 244 SCRA 479, 490 [1995]; *People v. De Leon*, 248 SCRA 609, 622-623 [1995].

[41] REVISED PENAL CODE, Art. 14(16). See also *People v. Landicho*, 258 SCRA 1, 28 [1996]; *People v. Tobias*, 267 SCRA 229, 255-256 [1997].

[42] TSN, 3 February 1994, 11-15.

[43] 93 Phil. 472 [1953].

[44] See *Heirs of Raymundo Castro v. Bustos*, 27 SCRA 327, 334-335 [1969].

[45] *De la Paz v. Intermediate Appellate Court*, 154 SCRA 65, 76 [1987]; *Scott Consultants & Resource Development Corp. v. Court of Appeals*, 242 SCRA 393, 404-405 [1995]. In *Fabre v. Court of Appeals*, 259 SCRA 426 [1996], although the decisions of the trial court and the Court of Appeals did not sufficiently indicate the factual and legal basis for the award of damages, the same was nevertheless supported by evidence in the records of the case; *id.*, 437.

[46] *Villa Rey Transit, Inc. v. Court of Appeals*, 31 SCRA 511, 517-518 [1970]; *Davila v. Philippine Air Lines*, 49 SCRA 497, 504-505 [1973]; *MD Transit, Inc. v. Court of Appeals*, 90 SCRA 542, 545 [1979].

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