

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO (EGAY) EBRADA, ACCUSED-APPELLANT.

G.R. No. 122774. September 25, 1998

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant, Edgardo (Egay) Ebrada, appeals from a judgment in Criminal Case No. 374 of the Regional Trial Court of Makati, Branch 136, which imposed upon him the penalty of reclusion perpetua for the murder of Lolito Magbanua, Jr.[1]

The accusatory portion of the information, under which appellant was tried, alleges as follows:

That on or about the 26th day of March 1988, in the Municipality of Muntinlupa, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and stab one Lolito Magbanua, Jr. at the back, inflicting upon said victim serious and mortal wounds which were the direct and immediate cause of the death of said Lolito Magbanua, Jr., to the damage and prejudice of the heirs of Lolito Magbanua, Jr. in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines.[2]

On July 1, 1988, a warrant for the arrest of appellant was issued but was returned unserved.[3] On May 3, 1989, an alias warrant of arrest was issued.[4] Finally, in January 1994, appellant was arrested by the elements of the PNP CIS Command.[5] On January 25, 1994, duly assisted by counsel de parte, appellant entered a plea of not guilty to the crime charged.[6]

Thereafter, trial of the case proceeded. For a complete perspective of the factual situation, we have deemed it necessary to reproduce the respective testimonies of the prosecution and defense witnesses as correctly summarized by the trial court in its decision:

Lolito Magbanua, father of the victim, testified that on March 26, 1988, between 9:00 and 10:00 o'clock in the evening, while he was sleeping in his residence at San Guillermo St., Bayanan, Muntinlupa, Metro Manila, he was awakened by Mariano Millama, a neighbor and storekeeper who informed him that his son, Lolito Magbanua, Jr., was stabbed by the accused, Egay Ebrada. He immediately went out of his house and saw his son lying face down on the ground in front of the store. He, together with Marcela Magbanua, wife of the deceased, a barangay tanod and a driver, brought his son to the Ospital ng Maynila at around 11:00 o'clock in the evening. On the way to the hospital, on board a Tamaraw jeepney, he and the Barangay Tanod asked his son, the deceased, as to who stabbed him, and his son's reply was Egay Ebrada. The deceased died early in the morning of March 27, 1988. The following day, March 28, 1988, he went to the Muntinlupa Police Headquarters and filed a complaint against the accused.

The second witness for the prosecution, who claimed to be an eyewitness for the prosecution, who claimed to be an eyewitness, was Mariano Millama, a neighbor and storekeeper, who testified that about 9:00 o'clock in the evening of March 26, 1988, he alone was inside his store located at San Guillermo St., Bayanan,

Muntinlupa. While the deceased and a companion were talking to each other in front of the said store seated on top of a table, the accused came from behind the deceased, after coming from an alley and crossing the street towards the store, and "stabbed Lolito Magbanua, Jr. once at the right buttocks," and consequently, the deceased grimaced in pain and fell to the ground, as his companion helped him to stand up. The accused fled from the scene of the incident. He then went inside his house and instructed his children to close the store.

Thereafter, the father of the deceased informed him of the latter's death the following day. He did not report the incident to the police because it was the duty of the deceased's parents to report to the police, he not being a relative. The next day, no barangay captain or police officer investigated the incident.

Renato Mateo testified that on March 26, 1988 at 9:00 o'clock in the evening, he, Wilfredo Navarro, Rafael Manankil and the accused were drinking in front of his house; thereafter, his group moved to the store of Mariano Millama, located at San Guillermo St., Bayanan, Muntinlupa. The deceased and "Boy Tatoo" were there in front of the store. At 10:00 o'clock in the evening, while drinking at the said place, he saw the deceased bloodied and as the latter stood, he fell down. When he turned his head, he saw the accused coming from his back and then ran away.

Dr. Maximo Reyes, Medico-Legal Officer of the National Bureau of Investigation, testified that he performed a post-mortem examination on the body of the deceased on March 27, 1988 and he prepared a medico-legal post-mortem report (Exhibit "D"); that the cause of death was "hemorrhage, secondary to the stab wound at the back or the left lumbar region where the kidney and small intestine(s) were located." He said that the perpetrator of the crime was behind and slightly to the left of the victim; that the wound was caused by a sharp pointed/single bladed instrument, like a balisong or knife and a kitchen knife and, that in spite of the timely intervention by the medical practitioners, the victim succumbed to death. He likewise, contended that "there was no reflex mechanism of self-protection or self-defense, x x x, that would tell (sic) to produce that he defended himself, x x x."

Marcela Magbanua, wife of the deceased, testified on the civil aspect of the case, in that she suffered damages as a result of her husband's death. She spent P3,000.00 for the hospitalization of the deceased, representing payment for blood and medicines. Said amount was given by the deceased's parents and was later paid back from or out of the monetary donations she had received uring the wake. She also spent P8,000.00 for the week's wake and P10,000.00 for the burial and both amounts were paid out of or from the donations. No receipt for all the expenses were kept, because she had lost hope that the accused would be apprehended, since a span of six (6) years or more had lapsed from the time her husband died on March 26, 1988, and the accused was arrested on January, 1994. Her aggrieved feelings over the death of her husband can not be quantified in terms of money "because what was taken was life."

She further contended that the victim, her husband, was earning an average of One Thousand Five Hundred Pesos (P1,500.00) a month, and that he was forty-two (42) years old and in good health at the time of his death. This fact raises the presumption that the victim would have lived at the very least another twenty (20) years more. Consequently, the heirs of the victim are entitled to receive a compensatory damage of at least three hundred and sixty thousand pesos (P360,000. 00), to compensate the unrealized earnings of the victim.

The defense witness, Rafael Manankil testified that at 9:00 o'clock in the evening of March 26, 1988, he had a drinking spree with the deceased, Renato Mateo, Willy Navarro and "Prado" in front of Renato's house at the "looban" or alley at San Guillermo St., Bayanan, Muntinlupa, Metro Manila. He was with the deceased at that time, and while they were drinking, the accused arrived and was offered a bottle of beer by Renato Mateo and the former accepted it. Then the accused confronted the deceased by asking the whereabouts of his lost items, namely: a fighting cock, a 14" T.V. set and an electric fan. But, the deceased answered with a question: "who told you that information" and the reply was "Prado". Thereafter, the accused went home and later came back and went to Mariano Millama's store and ordered some bottles of beer. He, Renato Mateo and the deceased were the only ones drinking at the store when the accused came back and was again offered to drink by

Renato, and he drank the beer and said he was waiting for his wife; another bottle of beer was offered by the deceased but, this time, the former refused. The deceased uttered invectives, saying "putang ina". Thereafter, "a commotion followed, so he left the place because he did not want to be involved in any trouble." He added that the deceased seemed to pull something from the left side of the body, but he was not sure what it was because "he was far from the two who were across the street," seated at the "flower box", that was seven (7) meters away the store.

The accused testified in his defense, and contend(ed) that he and his wife resided at San Guillermo St., Muntinlupa, Metro Manila, following their marriage in 1982. But, from 1985 up to the time of the incident, on March 26, 1988, he had resided in Guadalupe, Makati, Metro Manila, while his wife and children lived in Muntinlupa. He and his family were living separately because they had constructed a small store in front of their house in Muntinlupa, but he and his wife were not estranged from one another. He visited his family every weekend; and at times, it was his wife who visited him.

On March 26, 1988, Saturday, between 7:00 and 7:30 o'clock in the evening, while he was on his way home to Muntinlupa, he happened to pass by a group of persons, namely: Renato Mateo, the deceased, Willy Navarro, Raffy Manankil and Manny Navarro, who were engaged in a drinking spree in front of Renato Mateo's house. Renato Mateo offered him a drink, which he accepted. Then, he confronted the deceased by asking why the latter stole his 14" colored T.V., his electric fan, and a fighting cock, all valued at more than P10, 000.00, from his house during the first week of March 1987 or 1988, and the deceased, in turn, asked him where he got the information and his reply was that the information came from Manny Navarro and "Prado"; he then requested the deceased to return his T.V. and electric fan, but the deceased told him that said items were with the deceased's companion. The deceased then said that he was not a resident of the place. The incident was not reported to the police because he was not sure who stole them.

The accused then went home to the house of his parents-in-law at around 7:30 o'clock in the evening, and played with his children. Then, at 9:30 o'clock in the evening, he went out to fetch his wife, who was coming home from work, passing through the "looban" or an alley that leads to his house. Before reaching San Guillermo St., he saw the same group of persons, whom he saw earlier having a drinking spree in front of Renato Mateo's house, but this time, the group was at the store of Mariano Millama. Renato Mateo offered him a bottle of beer when he reached the store. After receiving the bottle of beer from Mateo, he crossed the street and sat on a concrete bench, located at the side of the street.

On both sides of the store's counter were two (2) benches facing each other. "Boy Tatoo" was seated at the left side; and the deceased and Renato Mateo were seated at the right side; Willy Navarro and Raffy Manankil were standing in front of the said store (Exhibit "1"). After consuming the bottle of beer, he returned the bottle to the store. When he was offered another bottle by the deceased, he refused the offer. Then, the deceased cursed him by saying "putang ina mo, ang yabang mo", and the former drew a knife from the left side of his back using his left hand. He grabbed the deceased's left hand and struggled for the possession of the knife, with the blade pointed towards the deceased's left side. Not being face to face with the deceased, he was at the left side of Renato Mateo and the deceased. He tried to pull the deceased's left hand with his two hands; the deceased resisted by forcefully "pulling the knife away from him and then towards him." Nobody intervened to pacify them. Then, when he saw the knife already stuck inside the deceased's left side of the body, he released his left hand from the knife. He was shocked, at first, then he gained his composure and scampered towards the "looban" or alley leading to his house. He did not report the incident nor surrender to the proper authorities. He went back to his home in Guadalupe and never returned to Muntinlupa because he feared the consequences of his action. He was arrested after six (6) years from the date of the incident.[7]

On August 31, 1995, the trial court rendered a decision against appellant with the following disposition:

WHEREFORE, and in consideration of all the foregoing, the court finds the accused, Egay Ebrada, guilty beyond reasonable doubt of the crime of Murder and there being no mitigating or aggravating circumstances,

the Court hereby sentences him to suffer imprisonment of Reclusion Perpetua and to pay the heirs of the victim the following amounts:

- a) the sum of Three Hundred Sixty Thousand pesos (P360, 000.00) as indemnity or compensatory damages;
- b) the sum of Fifty Thousand pesos (P50,000.00) as moral damages;
- c) the sum of Twenty-Five Thousand pesos (P25,000.00) as exemplary damages; and,
- d) To pay the cost of the suit.

SO ORDERED.[8]

Appellant is now before us seeking the reversal of the judgment, insisting that the court below erred (1) in finding that the guilt of the accused had been established by proof beyond reasonable doubt; (2) in giving weight to the testimonies of prosecution witnesses Mariano Millama and Lolito Magbanua, Sr. in spite of major inconsistencies and discrepancies affecting their credibility; and (3) in declaring that treachery exists in the absence of clear and convincing evidence.[9]

We find the present appeal to be without merit.

Appellant's assignment of errors is basically focused on the issue of credibility. In this respect, the time-honored rule is that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[10] In the instant case, we find no reason to depart from said doctrine.

Appellant in his attempt to discredit the testimony of the prosecution eyewitness, Mariano Millama, alleged several inconsistencies, viz.:

1. Mariano's claim that after he witnessed the stabbing incident he got scared and went inside his house and told his children to close the store, as well as his testimony that it was only two days after the incident when he saw the father of the victim that he came to know of the death of the victim, were inconsistent with the statement of the father of the deceased that it was Mariano Millama who awakened and informed him about the fate of his son.
2. That the statement of Mariano that the victim was stabbed at the right buttocks (pigi) was contrary to the findings of the medico-legal officer that the wound was located at the left side of the back.
3. That the statement of Mariano that he was not selling liquor was belied by the testimony of the other prosecution witness, Renato Mateo, that they bought the liquor from Mariano's store.[11]

The aforesaid inconsistencies are too trivial and insignificant to merit consideration. They cannot have any enervating impact on the categorical and straightforward testimony of Mariano regarding the stabbing incident and the positive identification of appellant as the culprit. It bears reiteration and emphasis that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect the substance of their testimonies.[12]

In addition, the supposed inconsistencies are not without explanations. The first alleged inconsistency is more apparent than real. Mariano made no categorical declaration that he was not the one who informed the father of the victim about the incident. The fact that immediately after the incident Mariano closed the store and went

inside his house will not render it impossible for him to inform the father, considering that the house of the victim was located at the back of the store of Mariano.[13] Even the statement of Mariano that it was only two days after the incident that he learned about the death of the victim from the latter's father is not inconsistent with the testimony of the father of the victim that it was Mariano who informed him about the incident. The said statement did not in any way negate the possibility that the witness was able to see and talk to the father of the victim immediately after the incident.

With respect to the second, the same is explained by the fact that at the time appellant stabbed the victim at the back, the latter was facing Mariano.[14] So, from the viewpoint of Mariano, the victim was hit at the right side. The said statement of Mariano did not weaken but instead strengthened the prosecution's case by corroborating the fact that, indeed, appellant stabbed the victim from behind.

As to the third, although it may be true that the witness is not telling the truth when he said that he was not selling liquor, the same may readily be explained. His denial can be attributed to his fear that an admission on his part can be used against him since, in their barangay, there is an ordinance prohibiting store owners from selling liquor.[15] The court is not compelled to reject the entire testimony of a witness if it finds portions thereof to be untrue.[16] Especially is this so in this case, where the falsity pertains to an inconsequential matter that does not touch upon the basic aspects of the who, the how, and the when, of the crime committed.[17]

A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory.[18] This Court has stated time and again that minor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. Witnesses are not expected to remember every single detail of an incident with perfect or total recall.[19]

Moreover, the defense has not shown that Mariano Millama had any ill motive that would have moved him to falsely implicate appellant in the death of Lolito Magbanua, Jr. It is settled that where there is nothing to indicate that a witness was actuated by improper motives, his positive and categorical declarations on the witness stand under solemn oath deserve full faith and credence.[20]

The guilt of appellant was further established by the testimony of the father of the victim that while they were on their way to the hospital the victim named appellant as his assailant. Although the declarant did not make a statement that he was on the brink of death, the degree and seriousness of the wound and the fact that the death supervened shortly afterwards may be considered as substantial evidence that the declaration was made by the victim with full realization that he was in a dying condition.[21]

Even assuming *arguendo* that the declaration is not admissible as a dying declaration, it is still admissible as part of the *res gestae*, since it was made shortly after the startling occurrence and under the influence thereof, hence, under the circumstances, the victim evidently had no opportunity to contrive.[22]

In view of the strength of the evidence for the People, appellant's theory of self-defense must fail. His version of the incident was negated by the nature and the location of the wound sustained by the deceased. The medico-legal officer, who examined the victim's body, gave the following testimony:

ATTY. EMATA

You stated that the wound is located in the left lumbar region but you also stated that the perpetrator was behind the victim slightly to the left under normal conditions, could it be that the perpetrator was also on the left side of the victim?

A

Well that is what I have said.

Q

It could also be slightly to the left in front of the victim?

A

Well to the left or in front could be a remote position because the stab wound was sustained at the left side of body, sir.

Q

But this wound could also be caused while the perpetrator was in front of the victim and curved backward?

A

Well likewise, Your Honor, this is a hypothetical question which needs a hypothetical answer because the Doctor was not present at the time of the incident; well actually if you will be asking the Doctor that and then there is some point of what you call that a medical instinct medicine or a reflex mechanism of self-protection or self-defense in which case, in cases of self-defense, there should be some form of injuries that may be attributed from the surface of the body of the victim, in this particular case I have not seen any physical injury that would tell to produce that he defended himself so as what I have said it could be remote, your question is a remote thing, sir.

ATTY. EMATA

But it could be happened (sic), Doctor?

A

It could not, sir.

Q

It could not happen?

A

No, sir.

Q

You are speaking hypothetically when you said it could not happen?

A

Yes, sir.

Q

Under normal condition, it could not happen?

A

Well as what I have said under normal condition, it is a (sic) remote.[23]

Even appellant's description of the reaction of Renato Mateo, the person standing between him and the deceased,

is so unnatural and improbable. Appellant testified in this wise:

FISCAL CHUA CHENG

Now while you were grappling the knife from the victim, what did Renato Mateo do, if any, since he was between you and and the victim?

A

When I saw Renato Mateo ma'am his head was bended forward with his head bow(ed) down.

Q

So you mean to say that Renato Mateo did not do anything to pacify you and the victim.

A

None ma'am.

Q

Despite of the fact that he was in between you and the victim?

ATTY. EMATA:

Already answered, your honor, Renato Mateo did not do anything.[24]

Furthermore, appellant failed to prove unlawful aggression. Appellant grabbed the knife from the victim when the latter was still in the act of pulling the knife from his side. At that point, there was a person standing between the victim and appellant. Considering these attendant circumstances, the said action of the victim does not make out a case of real aggression but a mere threat or act of intimidation which could be handled by other means less violent.

For unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude.[25] The aggression must be real or at least imminent and not merely imaginary. A belief that a person is about to be attacked is not sufficient. Even an intimidating or threatening attitude is by no means enough. A mere push or shove, not followed by other acts placing in real peril the life or personal safety of the accused, is not unlawful aggression. If no unlawful aggression attributed to the victim is established, there can be no self-defense, complete or incomplete.[26]

Finally, appellant's flight negates self-defense and indicates guilt.[27] The act of fleeing and going into hiding for almost six years could not possibly be the actuations of a man claiming to be innocent of any wrongdoing.[28] If the accused honestly believed that his act constituted self-defense against the unlawful aggression of the victim, he should have reported the incident to the police, instead of escaping and avoiding the authorities until he was arrested or prevailed upon to surrender.[29] A righteous individual would not cower but admit readily the killing at the earliest opportunity if he was legally and morally justified in doing so.[30]

Treachery was correctly taken into account by the trial court. Appellant surreptitiously and without warning stabbed the victim from behind. The victim was caught off guard, without any opportunity to defend himself. Appellant indubitably employed a method in the execution of the crime that tended directly and specially to ensure its execution without risk to himself arising from the defense which the victim might make.[31]

On the civil liability imposed against appellant, the trial court correctly awarded moral damages. The widow of the victim testified that the death of her husband caused her suffering, sadness and pain.[32] However, the award

of exemplary damages, should be deleted in view of the failure of the prosecution to prove one or more generic aggravating circumstances.[33]

The trial court also erred in not granting the civil indemnity which is automatically imposed upon the accused without need of proof other than the fact of commission of the offense.[34] Thus, the sum of P50,000.00 as indemnity for the death of the victim, which is in accordance with present case law, must be awarded.

WHEREFORE, with the MODIFICATION that the award of exemplary damages should be deleted but death indemnity of P50,000.00 should be awarded, the appealed decision is hereby AFFIRMED in all other respects.

SO ORDERED.

Melo, Puno, and Martinez, JJ., concur.

Mendoza, J., on leave.

[*] Herein accused-appellant was charged and convicted under the name "Egay Ebrada," but he gave his name as "Edgardo Ebrada" when he testified in his defense in Criminal Case No. 374 in the court a quo on August 31, 1994 (see TSN, p. 3, of said session).

[1] 1 Penned by Judge Jose R. Bautista.¹

[2] Original Record, 1.

[3] Ibid., 2.

[4] Ibid., 3.

[5] Ibid., 8-10.

[6] Ibid., 29.

[7] Ibid., 151 - 157.

[8] Ibid., 160.

[9] Rollo, 52.

[10] People vs. Ulili, G.R. No. 103403, August 24, 1993, 225 SCRA 594, citing People vs. Tahuyan, G.R. 90295, February 5, 1993, 218 SCRA 461.

[11] Rollo, 60-65.

[12] People vs. Martinada, et al., G.R. Nos. 66401-03, February 13, 1991, 194 SCRA 36; People vs. Ulili, supra, Fn. 10.

[13] TSN, March 2, 1994, 5-6; March 17, 1994, 5.

[14] Ibid., March 17, 1994, 11, 20.

[15] Ibid., id., 16-17.

[16] People vs. Alcantara, et al., G.R. Nos. 112858-59, March 6, 1996, 254 SCRA 384.

[17] People vs. Montante, G.R. Nos. 86492-94, December 20, 1990, 192 SCRA 483.

[18] People vs. Paule, G.R. Nos. 118168-70, September 11, 1996, 261 SCRA 649.

- [19] *People vs. Echegaray*, G.R. No. 117472, June 25, 1996, 257 SCRA 561; *People vs. Alas, et al.*, G.R. Nos. 118335-36, June 19, 1997, 274 SCRA 310.
- [20] See *People vs. Paynor*, G.R. No. 116222, September 9, 1996, 261 SCRA 615; *People vs. Caures*, G.R. Nos. 104739-44, November 18, 1997.
- [21] *People vs. Obngayan*, G.R. No. L-29201, January 31, 1974, 55 SCRA 465.
- [22] *People vs. Salison, Jr., et al.*, G.R. No. 115690, February 20, 1996, 253 SCRA 758.
- [23] TSN, May 26, 1994, 28-30.
- [24] *Ibid.*, November 24, 1994, 4.
- [25] *People vs. Rey*, G.R. No. 80089, April 13, 1989, 172 SCRA 149.
- [26] *People vs. Galit, et al.*, G.R. No. 97432, March 1, 1994, 230 SCRA 486.
- [27] *People vs. Gregorio, et al.*, G.R. Nos. 109614-15, March 29, 1996, 255 SCRA 380.
- [28] *People vs. Tuson*, G.R. Nos. 106345-46, September 16, 1996, 261 SCRA 711.
- [29] *People vs. Caras*, G.R. No. 112731, July 18, 1994, 234 SCRA 199.
- [30] *People vs. Jagolingay, et al.*, G.R. No. 117399-117400, October 16, 1997.
- [31] *People vs. Tamparong, Jr., et al.*, G.R. No. 112713, October 25, 1995, 249 SCRA 584; *People vs. Escandor, et al.*, G.R. No. 95049, December 9, 1996, 265 SCRA 444.
- [32] TSN, May 31, 1994, 14-15.
- [33] *People vs. Patrolla, Jr.*, G.R. No. 112445, March 7, 1996, 254 SCRA 467.
- [34] *People vs. Caballes, et al.*, G.R. Nos. 102723-24, June 19, 1997, 274 SCRA 83.

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