

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELPIDIO DELMENDO Y URPIANO, ACCUSED-APPELLANT.

G.R. No. 123300. September 25, 1998

Ponente: REGALADO, J.

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REGALADO, J.:

On June 2, 1993, while on his way to attend the court hearing, Atty. Elpidio Monteclaro met his untimely and violent death. He was shot by a lone gunman right in the yard of the courthouse. Resultantly, an information was filed against herein accused-appellant Elpidio Delmendo, also known as Pidiong Delmendo, charging him with the crime of murder allegedly committed in this manner:

That on or about the 2nd day of June 1993 in the Municipality of Cauayan, Isabela, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, armed with a .45 caliber pistol, did, then and there, with malice afterthought and with deliberate intent to take the life of Atty. Elpidio Monteclaro, willfully, unlawfully, feloniously, suddenly, unexpectedly, and treacherous attack, assault and shoot with the said firearm Atty. Elpidio Monteclaro on the right fronto-temporal area, as a result of which said Atty. Elpidio Monteclaro sustained a mortal wound which caused his immediate death.[1]

A warrant for the arrest of herein appellant was duly issued but the same was returned unserved.[2] On August 24, 1994, the case was archived.[3] Sometime in May 1995, elements of the Philippine National Police (PNP) of Cauayan discovered appellant under detention at the Paranaque Municipal Jail for violation of Republic Act No. 6425. He was using and recorded under the different name of "Pejay Orpiano Del Mundo." [4]

Pursuant to the order of the trial court in the murder case, directing the Paranaque jail warden to produce the body of the indictee therein for arraignment, appellant was released to the custody of the Chief of Police of Cauayan.[5] On June 5, 1995, duly assisted by his counsel, appellant pleaded not guilty to the crime charged.[6]

Thereafter, the trial of the case proceeded, with the prosecution leading off with several witnesses. One of its witnesses, Menrado Laguitan, otherwise know as "Bombo Radio announcer Allan Soriano," testified that the victim, Atty. Elpidio Monteclaro, was the defense counsel in a criminal case for libel filed by Leonor Aczon against himself, two other Bombo Radio announcers and 27 public school teachers. On June 2, 1993, this witness was at the Regional Trial Court of Cauayan, Isabela to attend the hearing of said libel case in Branch 20 thereof.

At about 8:30 A.M. Atty. Monteclaro arrived at the courtyard and parked his car in front of the courthouse. The witness then approached Atty. Monteclaro, who was standing beside his car buttoning his "barong tagalog," and greeted him "Good morning." Suddenly, appellant emerged from the right side of the lawyer, holding a gun with both hands, and shot the latter at close range, hitting him in the head. Menrado Laguitan was momentarily stunned but. Upon regaining his composure, he ran to the courthouse and called the police to ask for assistance. Thereafter, he returned to the crime scene and saw the lifeless body of Atty. Monteclaro sprawled on the ground.[7]

The testimony of Menrado Laguitan was substantially corroborated in all its material points by Lourdes Yanuaria,

a teacher who was one of the accused in the libel case. She was able to completely witness the whole incident from the window of Branch 20 of the aforementioned trial court,[8] and commendably recounted at the trial what transpired in that tragic incident.

The two eyewitnesses gave a description of the assailant to the police investigator who arrived at the crime scene. A sketch of the face of the gunman was prepared by a catrographer on the basis of the descriptive details furnished by these witnesses. Later, during the investigation conducted by the National Bureau of Investigation (NBI), both eyewitnesses were able to pinpoint herein appellant as the assailant from a video tape and some pictures taken during the fiesta of Barangay Marabulig 2 held sometime in April 1993.[9] The Barangay Captain thereof identified the person fingered by the two eyewitnesses as Elpidio Delmendo, alias Pidiong Delmendo.[10]

The postmortem report shows that Atty. Elpidio Monteclaro sustained a gunshot wound with an entrance of about 1.7 centimeters located at the right fronto-temporal area and a point of exit at the left armpit about two inches lateral to the mid-axillary line. He died of cardiorespiratory arrest due to a gunshot wound.[11]

The wife of the victim, Zenaida Monteclaro, testified on the civil aspect of the case. She established, among others, that she incurred P86,000.00 as funeral expenses, and that her deceased husband was earning P255,000.00 per annum. The said claims of the private complainant were admitted by the defense counsel to facilitate the proceedings[12] and, in all probability, for lack of countervailing evidence.

SPO Edwin Pascua, one of the policemen who conducted the investigation,[13] and Edwin Asis, the radio announcer who aired the incident over the radio,[14] were also presented by the prosecution. Atty. Florencio Binalay, head agen of the NBI, Cagayan Valley Regional Office, was also called as a witness to refute the testimony of one of the defense witnesses, Franklin Parallag.[15]

The defense did not call appellant to the witness stand but, instead, presented four alleged eyewitnesses, namely, William Barasi,[16] Franklin Parallag,[17] Peter Maraggun[18] and Henry Valdez.[19] These witnesses claimed that they were present at the time of the incident and that they saw who shot Atty. Monteclaro. Their concurrent version of the facts regarding the killing of Atty. Monteclaro was the same as that of the prosecution. However, they declared that the gunman was not the herein appellant but a different person.

On September 21, 1995, the trial court rendered a decision with the following decretal portion:

WHEREFORE, in view of the foregoing consideration and finding the accused guilty beyond reasonable doubt of the crime charged in the information, judgment is hereby rendered sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P100,000.00 as compensatory damages, P2,500,00.00 as his lost income and P80,000.00 as funeral expenses.[20]

Not satisfied with the said judgment, appellant interposed the present appeal, in the process faulting the trial court for (1) giving weight and credence to the testimonies of the prosecution witnesses and disregarding the defense evidence, and (2) finding accused-appellant Elpidio Delmendo guilty beond reasonable doubt of the crime of murder.[21] The foregoing assignment of errors is anchored on the defense theory that the identity of herein appellant Elpidio Delmendo as the killer of Atty. Elpidio Monteclaro was not positively established by the prosecution.

Contrary to the claim of the defense, the identification of appellant as the perpetrator of the crime by the prosecution witnesses was positive and unmistakable. The decision of the trial court gave full faith and credence to the testimonies of Laguitan and Yanuaria, observing with an amplitude of details that their testimonies were clear, spontaneous and rang with truth.[22]

We find no reason to doubt the identification of appellant by the prosecution witness. The incident happened in

broad daylight, and the witnesses were both in a vantage position to clearly see the face of the assailant. Laguitan was standing approximately 4 ½ meters from the gunman,[23] while Yanuaria was only about 3.47 meters away from the locus criminis.[24] The two eyewitnesses had full opportunity to take a good look at the physical features of the gunman, without any obstruction. They were thus able to give a clear and detailed description of the gunman immediately after the incident. In fact, it was their visual depiction translated into a sketch that was successfully utilized to determine the true identity and name of the assailant.

The credibility of the prosecution witnesses is further enhanced by the failure of the defense to establish any base, unworthy or ill motive which could have induced them to testify falsely against appellant, especially on such a serious charge with grave consequences. Complementarily telling is the fact that appellant was unknown to the said witnesses at the time of the killing. Thus, the conditions of visibility being favorable and the witnesses being unbiased against appellant, their assertion as to the identity of the malefactor and the specific acts constituting the crime should be accepted.[25]

Appellate courts accord the highest respect to the assessment made by the trial court of the testimonies of eyewitnesses.[26] We have doctrinally held that the findings of a trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge over an appellate magistrate in the appreciation of testimonial evidence. It is judicially recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of their unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth.[27] Hence, except for compelling reasons, we are logically bound by the trial court's assessment of the credibility of witnesses.

Appellant's defense rests on plain and simple denial. This must ineluctably fail in view of the positive identification of appellant by two competent, credible and unimpeached witnesses. To the point of seeming triteness, the Court has consistently stressed that denial, like alibi, is a weak defense that becomes even weaker in the face of positive identification of the accused by prosecution witnesses.[28] This case presents another instance for a reiteration of such holding.

For, undeniably, the defense failed to refute the positive identification made by the prosecution witnesses. Indeed, the testimonies of the four defense witnesses are unworthy of belief since, as correctly pointed out by the Solicitor General:

- a) No one of the defense witnesses came forward to volunteer information on the identity of the gunman to the police authorities while the crime was being investigated.
- b) From their very own testimonies, none of the defense witnesses had the opportunity to look at the face of the gunman. When the shooting took place, Barasi, Parallag and Maraguan were at the back of the gunman. The gunman thereafter escaped towards an opposite direction – the East. While Valdez allegedly saw the gunman fleeing at the other side of a fifteen-meter wide street, at that time, a big truck and two tricycles passed by, and the gunman thereafter disappeared.
- c) Said defense witnesses' declarations were found to be either strangely unnatural or biased and coached. Barasi stood at the same place where he was for thirty (30) minutes doing nothing. Parallag and Maragun gave no explanation how they came to meet at the crime scene after not seeing each other for a period of almost twenty years. Parallag's claim that he was investigated by the NBI was firmly denied by Florencio Binalay, the head of the NBI team which investigated the incident. (Decision, pp.151, 153 to 159, Record).[29]

An adverse inference may also be deduced from appellant's failure to take the witness stand. While his failure to testify cannot be considered against him, it may however help in determining his guilt. The unexplained failure of

the accused to testify, under a circumstance where the crime imputed to him is so serious that places in the balance his very life and that his testimony might at least help in advancing his defense, gives rise to an inference that he did not want to testify because he did not want to betray himself.[30]

An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, may justify an inference that he is not innocent. Thus, we have the general principle that when an accused is silent when he should speak, in circumstances where an innocent person so situated would have spoken, on being accused of a crime, his silence and omission are admissible in evidence against him. Accordingly, it has been aptly said that silence may be assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession.[31]

Likewise, appellant's flight and his use of a different name to hide his identity is a clear and positive indication of his guilt. It is a well-entrenched doctrine that the flight of an accused from the scene of the crime and his act of hiding himself until he was arrested are circumstances highly indicative of his guilt, for, as has long been wisely said, the wicked flee even when no man pursueth but the righteous are as bold as a lion.[32]

It is beyond debate that the qualifying circumstance of treachery was properly appreciated by the court below. The attack upon Atty. Monteclaro, who was unarmed, was swift and unexpected. He had not committed the slightest provocation and was totally unaware of the murderous designs of appellant.[33] Treachery is present where the shooting was unexpected and sudden, giving the unarmed victim, no chance whatsoever to defend himself.[34]

And, now, on the civil liability of appellant. The award by the trial court of P100,000.00 as compensatory damages in the form of civil indemnity for the death of Atty. Monteclaro, for which no proof is required, must be reduced to P50,000.00 in accordance with current jurisprudence.[35]

As to the amount of indemnity for the loss of earning capacity of the deceased, the award of P2,500,000.00 by the trial court is in order. The victim was earning around P250,000.00 a year, and this fact was even admitted by the defense. At the time of his death, he was 55 years old. The trial court was correct in deducting from the annual gross income the sum of P100,000.00 as reasonable and necessary living expenses. The earning capacity, as an element of damages to one's estate for his death by wrongful act, is necessarily his net earning capacity or his capacity to acquire money, less the necessary expenses for his own living. Stated otherwise, the amount recoverable does not mean the loss of the entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received.[36] Thus, using the formula which has been repeatedly adopted by this Court,[37] the loss of earning capacity of the deceased victim must be computed as follows:

$$2/3 \times (80-55) \times \text{P}150,000.00 = \text{P}2,500,000.00[38]$$

However, despite the demise of the victim through the felonious act of appellant, moral damages cannot be awarded to his heirs.[39] The prosecution did not claim, or present evidence, testimonial or otherwise, to show that the heirs of the deceased are entitled thereto.[40] In the present stage of our case law on criminal taking of human life, evidence must be adduced by the offended parties which would warrant an award for moral damages under the bases thereof in civil law. This is unlike the doctrine recently adopted by the Court on moral damages in heinous crimes against chastity.[41]

WHEREFORE, the challenged judgment of the court a quo is hereby **AFFIRMED**, with the **MODIFICATION** that the award for compensatory damages as civil indemnity for the death of the victim is hereby reduced to P50,000.00. Costs against accused-appellant.

SO ORDERED.

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

[1] Original Record, 1.

[2] Ibid., 45-47.

[3] Ibid., 51.

[4] Ibid., 54-55.

[5] Ibid., 58-63.

[6] Ibid., 99.

[7] TSN, August 9, 1995, 5-34.

[8] Ibid., 36-50.

[9] Ibid., 17-27, 48-50; TSN, August 11, 1995, 117-120.

[10] Original Record, 41.

[11] Exhs. F & G, Folder of Exhibits, 11, 12.

[12] TSN, August 9, 1995, 52-53.

[13] Ibid., August 11, 1995, 3-20.

[14] Ibid., August 10, 1995, 12-29.

[15] Ibid., August 28, 3-9.

[16] Ibid., August 21, 1995, 2-16.

[17] Ibid., id., 16-36.

[18] Ibid., id., 37-51.

[19] Ibid., August 22, 1995, 2-12.

[20] Rollo, 20-39; per Judge Artemio R. Alivia.

[21] Ibid., 67.

[22] Original Record, 153.

[23] TSN, August 9, 1994, 9.

[24] Ibid., id., 39.

[25] People vs. Pascua, G.R. No. 1000990, February 27, 1992, 206 SCRA 628; People vs. Monterey, G.R. No. 109767, September 3, 1996, 261 SCRA 357; People vs. Cogonon, G.R. No. 94548, October 4, 1996, 262 SCRA 693.

[26] People vs. Ocsimar, G.R. No. 104630, February 20, 1996, 253 SCRA 689.

[27] People vs. Victor, G.R. No. 127903, July 9, 1998.

[28] *People vs. Ompad, Jr.*, G.R. Nos. 93730-31, June 10, 1994, 233 SCRA 62; *People vs. Salazar*, G.R. No. 109943, September 20, 1995, 248 SCRA 460.

[29] Brief for the Appellee, 10-11; Rollo, 135-136.

[30] *People vs. Cidro, et al.*, 105 Phil. 239 (1959).

[31] See *Underhill's Criminal Evidence*, 4th ed., 489-491; Sec. 32, Rule 130, Rules of Court.

[32] See *People vs. Tañote, et al.*, G.R. No. 109769, November 28, 1994, 238 SCRA 443.

[33] *People vs. Abrenica*, G.R. No. 118771, January 18, 1996, 252 SCRA 54.

[34] *People vs. Canuzo*, G.R. No. 112718, March 29, 1996, 255 SCRA 497; *People vs. Cortez, et al.*, G.R. No. 120920, February 12, 1998.

[35] *People vs. Sol*, G.R. No. 118504, May 7, 1997, 272 SCRA 392.

[36] *Villa Rey Transit, Inc. vs. Court of Appeals, et al.*, G.R. No. L-25499, February 18, 1970, 31 SCRA 511; see also *People vs. Teehankee, Jr.*, G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

[37] *People vs. Cordero, et al.*, G.R. No. 108919, October 11, 1996, 263 SCRA 122; *People vs. Teehankee, Jr.*, *supra*.

[38] Formula: $\frac{2}{3} \times [80 - \text{age of victim at the time of death}] \times \text{a reasonable portion of the net income which would have been received by the heirs as support} = \text{loss of earning capacity of the deceased}$.

[39] Art. 2217 of the Civil Code provides that moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Under Art. 2206(3), the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased resulting from a crime (*People vs. Bergante, et al.*, G.R. Nos. 120369-70, February 27, 1998).

[40] *People vs. Ballabare, et al.*, G.R. No. 108871, November 19, 1996, 264 SCRA 350; *People vs. Caballes, et al.*, G.R. Nos. 102723-24, June 19, 1997, 274 SCRA 83.

[41] See *People vs. Prades*, G.R. No. 127569, July 30, 1998.

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