

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN M. DE LA CRUZ (P) AND FERNANDO M. DE LA CRUZ (AT LARGE), ACCUSED, BENJAMIN M. DE LA CRUZ, ACCUSED-APPELLANT.

G.R. No. 123397. October 13, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

BENJAMIN M. DE LA CRUZ was convicted of murder by the RTC-Br. 129, Kalookan City, for the death of Rolando Millan and meted out an indeterminate prison term of fourteen (14) years of reclusion temporal as minimum to reclusion perpetua as maximum.[1] The Court of Appeals affirmed his conviction but modified the penalty to reclusion perpetua. It was found that only treachery as a qualifying circumstance attended the perpetration of the crime.[2] In view of the penalty imposed, the case was certified to us for review.[3]

These are the facts on which the conviction of accused-appellant Benjamin de la Cruz was based: On 24 January 1992, at 12:00 o'clock midnight, Rogelio Millan, then in the company of his brother Danilo, was waiting for his girlfriend at the corner of San Jose and B. Santos Streets, Isla San Juan, Kalookan City. Suddenly, Rogelio saw his other brother Rolando being blocked by accused-appellant Benjamin de la Cruz while Rolando was walking along the unlighted portion of B. Santos Street near the house of one Benjamin de la Cruz. Rogelio estimated that he was about three arms' length from Rolando and Benjamin. For almost twenty (20) minutes Rogelio was stunned, almost motionless, as Benjamin hit Rolando thrice with a shovel. While Rolando attempted to parry the attack with his left arm, he was nevertheless smashed in the right forehead. Then accused-appellant's brother Fernando de la Cruz stabbed Rolando five (5) times, mostly on the chest, and felled him. Fernando, who was accordingly charged together with his brother Benjamin M. de la Cruz, however has remained at large since the issuance of the warrant of his arrest on 26 March 1992.[4]

During the assault of Rolando by the De la Cruz brothers, Rogelio was unable to shout for help nor rush to his brother's aid. It was not until Benjamin and Fernando fled that Rogelio and Danilo brought the wounded Rolando to the hospital where he was pronounced dead on arrival.

Apparently, the trial court believed the narration of Rogelio on how his brother was killed. On the other hand, in rejecting accused-appellant's alibi expressed through his grandmother Concepcion Menes, who supported the former's claim that he was at home asleep when the slaying took place, the court below emphasized that the requisite of physical impossibility for the accused to be at the locus criminis was lacking.[5] In finding accused-appellant guilty of murder, the court a quo appreciated treachery as a qualifying circumstance taking into consideration how the De la Cruz brothers conspired to attack suddenly the unarmed Rolando with fatal blows without provocation on the part of their hapless victim.[6]

Dr. Renato C. Bautista, NBI Senior Medico-Legal Officer, in his post-mortem examination of the victim, confirmed Rogelio's account of the infliction of the injuries on Rolando and concluded that the latter died from multiple stab wounds.

On appeal to the Court of Appeals, accused-appellant Benjamin de la Cruz assailed the verdict of the trial court on four (4) grounds: (a) that the prosecution evidence was inherently incredible; (b) that there was no sufficient evidence to establish his guilt beyond reasonable doubt; (c) that the court a quo decided the case on the weakness of the defense evidence and not on the strength of the prosecution evidence thus shifting the burden of proof on the accused; and (d) that since his guilt was not duly proved he should not be held liable for compensatory damages and for funeral and related expenses.[7]

Finding no reversible error in the factual findings and conclusions of the court a quo, the Court of Appeals affirmed the conviction of accused-appellant and modified the penalty imposed to reclusion perpetua.

After a thorough review of the records, we also affirm the conviction of accused-appellant but reduce his prison term in view of the presence of voluntary surrender, a mitigating circumstance which was not considered in his favor. Extant on record is the fact that accused-appellant immediately presented himself to the authorities before midday of 24 January 1992 upon learning that he was a suspect in the killing of Rolando, or barely twelve (12) hours after the killing.[8]

Once more we evaluate the prosecution evidence to respond to accused-appellant's query whether his guilt was proved beyond reasonable doubt.

In criminal cases, it is elementary that the accused is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[9] Ultimately, what the law simply requires is that any proof against the accused must survive the test of reason for it is only when the conscience is satisfied that the perpetrator of the crime is the person on trial should there be a judgment of conviction.[10]

Prosecution witness Rogelio Millan who was present during the startling occurrence positively identified accused-appellant as one of the two (2) assailants of his brother Rolando, the other being appellant's brother Fernando de la Cruz. On direct examination, Rogelio testified-

COURT:

Q

You were waiting for your friend and you were with Danilo Millan?

A

Yes, your Honor.

Q

And then your brother Rolando Millan was "hinarang"?

A

Yes, your Honor.

FISCAL:

Q

Do you know who blocked him?

A

Yes, Ma'am, he is here (Witness pointing to a person who when asked of his name of Benjamin dela Cruz).

x x x x

Q

How long have you known Fernando dela Cruz?

A

For a long time, ma'am.

Q

Will you please give us more or less how long was that "matagal na"?

A

More or less five years, ma'am.

Q

What about Benjamin dela Cruz, do you know him?

A

Yes, ma'am.

Q

How long have you known Benjamin dela Cruz?

A

Long time also ma'am.

Q

How long is that long time?

A

Five years, more or less.

Q

Is this Benjamin dela Cruz you are telling us now the same Benjamin dela Cruz, the accused in this case?

A

Yes, ma'am.

Q

Where is he? Will you please identify him by pointing to him?

A

(Witness pointing to a person whom when asked answered to the name of Benjamin dela Cruz).[11]

Accused-appellant argues that if Rogelio was truly present at the scene of the crime, his act of not aiding his

brother whose life was in danger in the hands of accused-appellant was not in accord with the natural reactions and impulses of blood relations. Not necessarily; on the contrary, we view the cowardice of Rogelio, regretful as it may seem, as an earmark of truth. It is well-settled that people react differently when placed under emotional stress.[12] And that was how Rogelio reacted while admitting his own cowardice.

Rogelio's faintheartedness again surfaced when Danilo, instead of Rogelio, executed the affidavit upon which the criminal complaint was based. This according to accused-appellant further shows that Rogelio was not an eyewitness to the attack on the victim Rolando. Rogelio however gave the following explanation regarding this matter:

CROSS-EXAMINATION BY ATTY. ONGTECO:

Q

Do we get it right that you were the only one who witnessed the whole incident because you said Danilo went back home?

A

Yes, sir.

Q

Why did you allow Danilo to give his statement when you said that Danilo was not present when your brother Rolando was being attacked by the De la Cruz brothers?

FISCAL:

Objection, that calls for conclusion.

COURT:

No, I'm interested to know.

WITNESS:

A

I told him, sir. I narrated to him.

ATTY. ONGTECO:

Q

Because you do not want to be disturbed or bothered by this case, you forced Danilo Millan to give statement?

A

Yes, sir.

Q

Based on what you saw?

A

Yes, sir.[13]

During the trial, Rogelio clarified that he was only one who saw the incident because Danilo who was initially

with him left and went him shortly before the incident. Rogelio testified that he only fetched Danilo after the fatal attack on their brother Rolando so that they could carry the latter and bring him to the hospital.[14]

Obviously, the affidavit of Danilo was submitted for the purpose of determining probable cause, that is, whether there was sufficient ground to engender a well-founded belief that a crime had been committed and that the respondent was probably guilty thereof and should be held for trial.[15] Accused-appellant's conviction was a result of the positive identification and eyewitness account supplied by Rogelio at the trial when he finally mustered sufficient courage to recall in court what he had seen on the fateful night of 24 January 1992. As assessed by the trial court, Danilo's affidavit did not affect Rogelio's credibility. At any rate, the misrepresentation contained in Danilo's affidavit only reinforced the regrettable impression that Rogelio did not want to get involved in his brother's case. The defense had every opportunity to disprove Rogelio's story but in the process only enabled the lower court to ascertain that Rogelio simply related things as they happened. It bears reiterating that the initial reluctance of witnesses and their willingness to be involved in criminal investigations are common and have been judicially declared not to affect credibility.[16]

We see no cogent reason to reverse the trial court's finding that the prosecution eyewitness categorically identified accused-appellant as one of the culprits. It cannot be gainsaid that a distance of three arms' length from a lighted post provided enough visibility for positive identification of a person long known. In *People v. Obello*,^[17] we had occasion to rule-

x x x x Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder. Testimonies are to be weighed, not numbered, hence, a finding of guilt may be based on the uncorroborated testimony of a single witness when the trial court finds such testimony positive and credible (cited cases omitted).

Thus, in the face of such positive identification provided by Rogelio, the denial made by accused-appellant of any participation in the crime charged cannot prevail. Denials, as negative and self-serving evidence, do not deserve as much weight in law as a positive and affirmative testimony.[18] In the same vein, the alibi of accused-appellant cannot prosper due to his admission that his residence where he claimed to have been asleep at the time of the commission of the crime was merely a one-minute tricycle ride to the site of the crime.[19] We echo our pronouncement in *People v. Asis*^[20]-

x x x x When averring alibi, two requirements must be strictly met in order that the same may be of value to the defense, that is, the accused must prove that he was not present at the scene of the crime at the time of its commission, and that it was physically impossible for him to be there at the time. Without said requisites having been established, reliance on alibi all the more becomes a liability (emphasis supplied).

At this point, suffice it to state that eyewitness identification is vital evidence, and as in most cases, decisive of the success or failure of the prosecution.[21] Having established that accused-appellant was one of two (2) persons responsible for the killing of Rolando, the prosecution has passed the conscience test thereby meeting the requisite quantum of proof beyond reasonable doubt.

Thus, accused-appellant's claim that the trial court appreciated his alleged verbal confession before PO3 Ricardo Concepcion admitting the killing of Rolando in self-defense despite the absence of his counsel, is unfounded.[22] The records clearly show that Rogelio's eyewitness account and positive identification of accused-appellant as the perpetrator became the basis of the latter's conviction and not his uncounselled confession.

Conspiracy and treachery, as the trial court found, attended the killing. accused-appellant's act of hitting the deceased thrice with a shovel on the right forehead followed by the stab wounds inflicted by his brother Fernando which eventually led to the victim's death evidently showed a unity of purpose between the De la Cruz brothers.

To show conspiracy, direct proof of a previous synchronized actuations and the oneness of criminal intent may be inferred from the mode, method and the manner by which the offense was perpetrated. Once conspiracy is proved to exist, all the accused become equally liable.[23]

Finally, we agree with the trial court in appreciating treachery as qualifying the killing since accused-appellant and his fugitive brother without saying a word blocked Rolando's path as he walked by without any provocation on his part.

It is a jurisprudential rule that even when the attack is frontal, treachery may still exist when it is done in a sudden and unexpected manner that the victim is not given any chance to retaliate or defend himself thus ensuring the safety of the malefactors.[24] Under the facts of this case, conviction of the accused-appellant is inevitable. However, as we earlier intimated, he is entitled to the mitigating circumstance of voluntary surrender[25] as the records sufficiently demonstrate that: (a) he had not been actually arrested; (b) he surrendered himself to a person in authority or an agent of a person in authority; and, (c) his surrender was voluntary.[26]

Under Art. 64, par. 2, of The Revised Penal Code, when only a mitigating circumstance is present in the commission of the crime, the penalty to be imposed shall be in its minimum period. Accordingly, since the imposable penalty for murder is reclusion temporal in its maximum period to death, the minimum of such penalty is reclusion temporal in its maximum period.

Applying the Indeterminate Sentence Law, the maximum of the penalty to be imposed shall be taken from reclusion temporal in its maximum period which has a duration of seventeen (17) years, four (4) months and one (1) day to twenty (20) years, while the minimum shall be taken from the penalty next lower in degree, which is prision mayor in its maximum period to reclusion temporal in its medium period or ten (10) years and one (1) day to seventeen (17) years and four (4) months.

With respect to the additional amount of P8,000.00 awarded by the trial court representing funeral expenses and related expenses, apart from the P50,000.00 by way of compensatory damages, only the sum of P7,000.00 was duly supported by proper receipts (Exhs. "E" and "E-1").[27] Consequently, the Court can only accept those expenses properly receipted and genuinely incurred in connection with the death, wake and burial of the victim, unlike the civil indemnity of P50,000.00 which is automatically awarded without need of further evidence other than the fact of the victim's death.[28]

WHEREFORE, the decision of the Court of Appeals dated 26 September 1995 finding accused-appellant BENJAMIN DE LA CRUZ GUILTY beyond reasonable doubt of MURDER is AFFIRMED with the MODIFICATION that he is sentenced to an indeterminate prison term of ten (10) years, six (6) months and ten (10) days of prision mayor maximum as minimum to seventeen (17) years, eight (8) months and twenty (20) days of reclusion temporal maximum as maximum. He is further ORDERED to indemnify the heirs of Rolando Millan in the amount of P50,000.00 for Rolando Millan's death plus P7,000.00 for funeral expenses, and to pay the costs.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Decision penned by Judge Bayani S. Rivera, RTC-Br. 129, Kalookan City, dated 21 September 1993, Crim. Case No. C-39573, CA Rollo, pp. 13-17.

[2] Decision penned by Justice Jesus M. Elbinias, concurred in by Justices Buenaventura J. Guerrero and B.A.

Adefuin-de la Cruz, prom. 26 September 1995, CA-G.R. No. 15132, CA Rollo, pp. 86-99.

[3] Id. p. 13; See also Rollo, p. 3.

[4] See Note 1, p. 13.

[5] Id., p. 15.

[6] Id., p. 16.

[7] Brief for Accused-Appellant, pp. 8-9; CA Rollo, pp. 40-41.

[8] TSN, 2 March 1993, pp. 4, 10-11.

[9] Sec. 2, Rule 133, Revised Rules of Court.

[10] See *People v. Frago*, G.R. Nos. 104492-93, 31 May 1994, 232 SCRA 653, 662, citing *People v. Flores*, G.R. No. 65647, 30 August 1988, 165 SCRA 71.

[11] TSN, 23 June 1992, pp. 3-4.

[12] *People v. Pija*, G.R. No. 97285, 16 June 1995 245 SCRA 80, 85; *People v. Biago*, G.R. No. 54411, 21 February 1990, 182 SCRA 411, 417; *People v. Abonada*, G.R. No. 50041, 27 January 1989, 169 SCRA 530, 541.

[13] See Note 11, p. 10.

[14] Id., pp. 7, 9-10.

[15] Rule 112, Sec. 1, Rules of Court.

[16] *People v. Competente*, G.R. No. 96697, 26 March 1992, 207 SCRA 591, 596, citing *People v. Pacia*, G.R. No. 69543, 14 June 1990, 186 SCRA 529.

[17] G.R. No. 108772, 14 January 1998, pp. 10-11.

[18] *People v. Bernal*, G.R. No. 101332, 13 March 1996, 254 SCRA 659, 670.

[19] See Note 8, pp. 8-9.

[20] G.R. No. 118936, 9 February 1998, p. 10 citing *People v. Sumaoy*, 263 SCRA 460 [1996] and *People v. Danao*, 253 SCRA 146, 153 [1996].

[21] *People v. Meneses*, G.R. No. 111742, 26 March 1998, citing *People v. Teehankee, Jr.*, 319 Phil. 128, 179 [1995]

[22] See Note 7, pp. 18-21; CA Rollo, pp. 50-53.

[23] *People v. Datun*, G.R. No. 118080, 7 July 1997, 272 SCRA 380, 389-390.

[24] *People v. Baydo*, G.R. No. 113799, 17 June 1997, 273 SCRA 526, 537-538; *People v. De Castro*, G.R. No. 98061, 25 January 1996, 252 SCRA 341, 352; *People v. De Manuel*, G.R. No. 117950, 9 October 1996, 263 SCRA 49, 59.

[25] See Note 8.

[26] *People v. Medina*, G.R. No. 113691, 6 February 1998, p. 19.

[27] Folder of Exhibits, p. 71.

[28] People v. Salcedo, G.R. No. 100920, 17 June 1997, 273 SCRA 473, 496-497.

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