PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN RONATO, JONATHAN RONATO AND VILMO RONATO, ACCUSED. RUBEN RONATO, ACCUSED-APPELLANT.

G.R. No. 124298. October 11, 1999

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Ruben Ronato, alias "Virgo", appeals the decision[1] of the Regional Trial Court of Dumaguete City, finding him gulty of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim's heirs in the amount of P50,000.

In an information[2] dated August 13, 1992, accused-appellant, together with his brothers Jonathan Ronato and Delmo Ronato[3] were charged with murder committed as folows:

> "That on 15 May 1991 at about 3:30 o'clock in the afternoon at Tampocon I Ayungon, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court accused Ruben Ronato with intent to kill and with treachery and evident premeditation did then and there willfully (sic), unlawfully and feloniously assault and shot Luduvico[4] Romano with the use of a firearm with which the said Ruben Ronatowas then armed and provided (sic) hitting the said victim on a vital part of his body inflicting upon the latter fatal injury which caused his death soon thereafter; and knowing the criminal design of Ruben Ronato, the other accused, namely; Vilmo Ronato and Jonathan Ronato concur (sic) with the said Ruben Ronato in killing the said victim by cooperating in the execution of the crime of murder with previous and simultaneous acts, i.e., by drawing their respective firearms, with which said accused were then armed and provided, thereby supplying the said Ruben Ronato material or moral aid in the execution of the crime, aforesaid, in an efficacious way and said acts were directly related to those acts attributed to the said Ruben Ronato.
>
> Contrary to article 248 in relation to Article 18 of the Revised Penal Code."

The three pleaded guilty when arraigned and trial ensued.

The prosecution tried to establish that on May 15, 1991, at about 3:00 o'clock in the afternoon, it being the fiesta of Ayungon, Negros Oriental, the victim Ludovico Romano and his wife Melecia were selling tuba in a makeshift hut, several meters away from the highway. Melecia sat on a bench, while Ludovico squatted on the ground, waiting for customers to arrive. Suddenly, a shot was fired. Melecia hid herself in an irrigation canal while Ludovico stood up and tried to find out where the shot came from. When another shot was fired, Melecia shouted for Ludovico to duck. Ludovico then stood an arm's length away from the highway. It was too late, Melecia saw accused-appellant Ruben Ronato shoot Ludovico. She was four (4) arms' length away from Ruben Ronato. His brothers, Jonathan and Delmo, were standing beside him. She saw Pompia and Edilberto Ronato pull the three away and commanded them to run. While the Ronatos were fleeing, she approached Ludovico and found out he was hit.[5] Santiago Romano, who happened to be passing by, was three (3) arms' length away from Ruben Ronato when he saw him aim his gun and shoot Ludovico. He helped Melecia bring Ludivico to Bindoy District

Hospital, but later transferred him to Negros Oriental Provincial Hospital for surgery.[6] Ludovico sustained one fatal gunshot would which penetrated his left lung and abdominal cavity.[7] Two days later, he died.[8]

To supply the motive for the shooting , Melecia testified that there was along standing grudge between the Ronatos and the Romanos involving a piece of land owned by the latter. Cresencio Ronato, Edilberto's brother and demanded possession of the land, the Ronatos refused. On March 3, 1991, Cresencio was killed. The Ronatos blamed Ludivico for the killing.[9]

On cross-examination, the defense tried to discredit Melecia's testimony by showing that she could not have possibly seen the person who shot Ludovico since she hid herself in a carnal which was one (1) foot deep.[10] The defense also tried to discredit the testimony of Santiago Romano who is a first cousin of the victim.[11]

When the defense presented its case, it claimed that it was Eduardo Ronato and not Ruben Ronato who shot Ludovico. According to the defense, on May 15, 1991, at about 3:00 o'clock in the afternoon, the spouses in the afternoon, the spouses Pompia and Edilberto Ronato, their two (2) sons Ruben and Jovone[12] and Eduardo, the son of Cresencio were walking along the highway on their way home after spending the morning at the fiesta fair. They were walking on file: Ruben and Edilberto led the group, followed by Eudardo, then by Pompia and the five (5) year old Jovone. When they neared the makeshift hut of the Romanos, Ludovico sprang on Pompia and tried to stab her. The rest of the Ronatos ran away. Edilberto and Ruben tried to grab Jovone while Pompia escaped and sought refuge in the house of a certain Rogelio Abella. While Pompia was running, she heard two (2) gun shots, but did not look back to see who fired them. It was already 5:00 o'clock in the afternoon when she reached their house. That evening, they found out that Eduardo was in jail for shooting Ludovico. On the witness stand, Pompia stated that the Romanos were angry at her because she was an eyewitness in the stabbing of Cresencio by Ludovico. She denied that Jonathan and Delmo were with them when the shooting happened.[13]

For his part, Edilberto testified that when Ludovico lunged for his wife, he tried to grab Jovone who was left behind. He then saw Eduardo aiming his gun at Ludovico.[14] He did not see what happened later for he was running away from the place. He denied that Ruben was carrying a gun during the incident and that Jonathan and Delmo were with them. On cross-examination, he admitted that he felt bad because his brother Cresencio was stabbed to death by Ludovico. However, he denied harboring ill-feelings against Ludovico. They have decided to leave the matter to the Municipal Trial Court of Bindoy where they filed a criminal complaint against Ludovico.[15]

To bolster the story that it was really Eduardo who shot Ludovico, the defense presented Police Officer 2 Devey Romblon. He testified that on May 15, 1991, at 6:35 p.m., he was on duty at the Philippine National Police (PNP) Station of Ayungon when he recorded the following information in the logbook[16] :

> "Entry 113. On this time and date, Mr. Eduardo Ronato y Guardario, 20 years of age, single, laborer of Lacson's Prawn Pond of Talisay, Bacolod City, and a resident of Sitio Punglo, Gomentoc, Ayungon, Negros Oriental, voluntarily surrendered to this PNP Station. This is in connection of (sic) the shooting incident [which] happened at the junction of Tampocon I and Maaslum Road. He is escorted by the barangay tanod of Barangay Anibong of this municipality in the name of Mr. Pedro Gorgonio and he bring (sic) his snub nose .38 revolver Smith and Wesson five-shot homemade w/o serial number and four empty shells. For further investigation."[17]

At that time, he was the only policeman inside the station since it was the town fiesta. Eduardo gave him a .38 caliber revolver[18] with four (4) empty shells[19] . On cross-examination, PO2 Romblon stated that Eduardo did not admit that he was the one who shot Ludovico.[20]

SPO4 Ebenezer Fabillar, the Chief of Police of the PNP Ayungon, testified that on May 15, 1991, at 6:00 o'clock

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in the evening, he read the station's logbook and learned that a certain LudovicoRomano was shot in Tampocon I. He designated several policemen to conduct an investigation. When the investigation was concluded, they made a verbal report to him that it was not Eduardo Ronato who shot Ludovico. On May 25, 1991, he ordered the release of Eduardo.[21]

SPO2 Miguelito Garcia testified that he was not able to investigate Eduardo Ronato despite the advice of Chief of Police Ebenezer Fabillar. He was only able to investigate the witnesses for the prosecution who informed him that it was Ruben Ronato who shot Ludovico. They did not mention Eduardo Ronato as a suspect.[22]

When accused-appellant Ruben took the witness stand, he claimed that he, together with his mother and father, brother Jovone and cousin Eduardo were on their way home when they passed by Ludovico who was squatting by the roadside. Suddenly, he heard his mother shout for help. When he looked back, he saw Ludovico chasing his mother with a hunting knife. He then saw Eduardo shoot Ludovico. He and his father held his brother Jovone and his father told him to go home. The three (3) of them reached their house safely. Shortly after, his mother arrived. He belied the Romano's claim that he was the one who shot Ludovico. He claimed that Melecia did not like them for his mother was an eyewitness in the stabbing of Cresencio by Ludovico.[23] On cross-examination, he stated that when Ludovico was trying to stab his mother, he was unable to help her since Ludovico was a big man. He just stood by and held his little brother Jovone. His father was also unable to help because "Ludovico was so mad at that time" and "we were not armed."[24]

When trial concluded, the court a quo found Ruben Ronato guilty of murder, but acquitted his brothers Jonathan and Delmo for insufficiency of evidence. Hence, this appeal where accused-appellant assigns the following errors committed by the trial court:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN HOLDING THAT THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH QUALIFIED THE KILLING TO MURDER, GRANTING THAT HEREIN ACCUSED-APPELLANT WAS THE PERPETRATOR OF THE CRIME CHARGED.

We find accused-appellant guilty of murder.

The prosecution established with certainty the identity and culpability of accused-appellant. Melecia Romano and Santiago Romano testified that it was accused-appellant whom they saw shoot Ludovico Romano. Melecia being four (4) arms' length and Santiago, three (3) arms' length away from him, which distances are reasonable to make an accurate identification. Furthermore, they are familiar with the accused-appellant having lived in the same place with him. Accused-appellant tried to discredit the testimony of these two (2) eyewitnesses by saying that Melecia was the wife while Santiago was the first cousin of the victim. But mere relationship of the witness to the victim does not necessarily impair credibility.[25] This Court is well aware that not too infrequently crimes are committed with just the relatives of the victim as witnesses.[26] It will be a miscarriage of justice to disbelieve the two (2) eyewitnesses in this case simply because of relationship. More than anyone else, the victim's relatives have a great interest in helping prosecute the real offender and have him put to jail.[27] Moreover, accused-appellant failed to impute any ill-motive for these eyewitnesses to testify against him

Accused-appellant points to his cousin Eduardo as the real culprit and questions why the police did not investigate and file charges against him. But, as testified to by the police officers, Eduardo did not admit that he was the one who shot the victim. He confided to the police officers that he was only forced by accused-appellant to surrender the gun to the police officers. These findings are bolstered by the fact that Melecia and Santiago Romano did not mention the name of Eduardo as the one who shot Ludovico when their initial statements were taken by the police.

Accused-appellant also contends that there were other people passing by who could have testified to the shooting, yet, the prosecution only presented the relatives of the victim. It is well-settled that "it is the prosecution which determines who among the witnesses to a crime should testify in court. The prosecutor handling the case is given a wide discretion on this matter. It is definitely not for the courts, much more the defense to dictate what evidence to present or who should take the witness stand."[28]

The trial court convicted accused-appellant of murder appreciating abuse of superior strength as qualifying circumstance. However, a cursory reading of the information against accused-appellant shows that abuse of superior strength was not alleged therein. An accused must be informed of the cause and the nature of the accusation against him. Since abuse of superior strength qualifies the crime to murder, accused-appellant should have been apprised of this fact from the beginning to prepare for his defense. Be that as it may, we find the accused-appellant guilty of murder qualified by treachery. Treachery was alleged in the information and proven during the course of the trial. The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked.[29] There is treachery when the attack on the victim was made without giving the latter warning of any kind and thus rendering him unable to defend himself from an assailant's unexpected attack.[30]

In People v. Javier[31] , the defense asked this Court to discount the fact that the attack on the victim was executed treacherously considering that the victim "would have been able to see the approach of his would-be attackers." In refusing to do so we reasoned that "while a victim may have been warned of possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate." The case at bar presents a similar scenario, for while the victim might have been able to look around after the first and second shots were fired by accused-appellant, still he had no opportunity to defend himself. In fact, he had no inkling that he was the target of the shooting. As testified to by Melecia, the victim was "squatting on the ground" in their makeshift hut when the shooting started. The victim stood up to find out what was happening. On the third time, accused-appellant shot him point blank and in a helpless position.

Finally, the defense contends that it was Eduardo who had a motive to kill Ludovico, since the latter stabbed Eduardo's father to death. However, motive is only crucial if there is no positive identification of the offender. The positive identification of .accused-appellant is weightier than his bare denial.

IN VIEW WHEREOF, we find accused-appellant Ruben Ronato guilty of murder qualified by treachery. Accordingly, he is sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00. Costs against accused-appellant.

SO ORDERED.

Pardo, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), and Kapunan, J., on official business abroad.

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[1] Penned by Judge Teopisto L. Culampano, dated November 20, 1995.

[2] Rollo, p.19.

[3] Cited as Delmo in the Decision and the Records, but Vilmo in the information.

[4] Sometimes referred to in the Records as Ludovico and Lodivico.

[5] TSN, September 1, 1993, pp. 2-9.

[6] TSN, September 20, 1993, pp. 4-6.

[7] TSN, September 24, 1993, p. 5.

[8] Death Certificate, “Exhibit “B”, Original Record, p. 9.

[9] Supra note 5, p. 10.

[10] Id, pp. 11-12.

[11] Supra note 6, p. 9.

[12] also cited as Joebon in the TSN.

[13] TSN, October 6, 1993, pp. 3-9.

[14] TSN, November 4, 1993, pp. 4-13.

[15] Id, p. 15.

[16] TSN, November 8, 1993, p. 3.

[17] Exhibit “1”, Original Record, pp. 208-209.

[18] Exhibit “2”.

[19] Exhibit “2-a”.

[20] Supra note 16, pp 4-6.

[21] TSN, November 11, 1993, pp. 7-23; the verbal order of release was recorded in Entry 194 of the station’s logbook marked as Exhibit “3”.

[22] TSN, February 24, 1994, pp. 3-10.

[23] Id, pp. 14-23.

[24] Id, p. 26.

[25] People v. Dianos, G.R. No. 119311, October 7, 1998; People v. Turingan, 282 SCRA 424 [1997].

[26] Id.

[27] People v. Salvador, 279 SCRA 164 [1997].

[28] Id, p. 241.

[29] People v. Lapay, G.R. No, 123072, October 14 1998.

[30] People v. Hayahay, 279 SCRA 567 [1997]; People v. Felix, G.R. No. 126914, October 1, 1998; People v.

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Navarro, G.R. No. 129566, October 7, 1998.

[31] 269 SCRA 181 [1997].

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