

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIXBERTO LAO-AS, ACCUSED-APPELLANT.

G.R. No. 126396. June 29, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated May 29, 1996 of the Regional Trial Court of Bulacan, Branch 22, in Criminal Case No. 2303-M-91, convicting Felixberto Lao-as for murder, imposing upon him the penalty of reclusion perpetua, and ordering him to pay the victim's heirs indemnity in the amount of P50,000.00 with 6% interest from the time of filing the information with the trial court.[2]

The information against appellant dated November 19, 1991 alleged:

That on or about the 25th day of December, 1988, in the municipality of Marilao, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill one Leonardo Bastuten, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault, stab with a bladed instrument and use personal violence on the said Leonardo Bastuten, hitting the latter on his body, thereby causing him stab wounds which directly caused his death.

Contrary to law. [3]

The facts of the case, as summarized by the Office of the Solicitor General and which we find supported by the records, are as follows:

On December 24, 1998, the victim Leonardo Bastuten invited appellant, Armando Ramirez, Demetrio Candelisas[4] and a certain Lanchiola to his house in Tabing Ilog, Marilao, Bulacan to celebrate Christmas. Bastuten and the four persons he invited are from Bacolod City (tsn, Nov. 16, 1994, pp. 4, 5, 9, 10, 12, 13).

The drinking inside the compound of the Bastuten started at about 4:00 in the afternoon of December 24, 1988 and ended at 5:00 in the morning of Christmas day. The group consumed about 4 to 5 big bottles of Tanduay ESQ.

Bastuten himself did not join the drinking. (tsn, Nov. 16, 1994, pp. 12-14). At about 10:00 in the evening of December 24, 1988, he went to sleep, while his guests continued drinking. At about 5:00 o'clock in the morning, Bastuten woke up and went outside his house. Bastuten talked with Armando Ramirez and told him that he still wanted to sleep (tsn, Nov. 16, 1994, pp. 14, 15).

At about 5:30 in the morning, Bastuten went again downstairs but this time he did not talk with Ramirez. Bastuten did not do anything. Appellant who was then drunk and without saying a word, got a knife from his left sock and stabbed Bastuten. Appellant was about to stab Bastuten for the second time but Ramirez, who was only two feet away was able to parry the thrust. The left thumb of Ramirez was wounded. Ramirez was not aware of any reason why appellant stabbed the victim. After stabbing the victim, appellant ran away (tsn, Nov. 16, 1994, pp. 5-11, 15-18).

Demetrio Candalisas, a friend of the victim, was in the victim's house taking a rest. He heard the victim shout and say "pare, nasaksak ako." He asked the victim who stabbed him and the victim told him that it was appellant. He brought the victim to the hospital. At the hospital, the victim told him to inform his (the victim's) parents (tsn, March 21, 1995, pp. 5-10).[5]

Bastuten's wife, Concepcion, failed to talk with her husband, who soon could no longer speak. He succumbed to septicemia and reversible shocks due to the stab wounds on December 27, 1988.

Upon arraignment of the charge against him, appellant pleaded not guilty.[6] In the course of trial, the following witnesses were presented by the prosecution: (1) Concepcion Bastuten,[7] the wife of the victim; (2) Armando Ramirez, an alleged eyewitness to the stabbing incident; and (3) Demetrio Candilosas, who brought the victim to the hospital and allegedly heard him declare that he had been stabbed by appellant.[8]

For its part, the defense presented the following witnesses: (1) Appellant, who testified on his behalf, and (2) Bienvenido Porlaje, who testified that he saw the victim and appellant having a fight, with the former holding a knife.[9]

On May 29, 1996, the trial court convicted appellant of the crime of murder, disposing as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1) finding the accused GUILTY beyond reasonable doubt of the crime of murder as penalized under Art. 247, Revised Penal Code and is hereby sentenced to suffer the penalty of reclusion perpetua;

2) accused is ordered to pay the following amount to the heirs of Leonardo Bastuten:

(a) P50,000.00 for the life of the victim Leonardo Bastuten with 6% interest on all amount due from the filing of the information on November 29, 1991 until said amounts have been fully paid.

SO ORDERED. [10]

In his appeal, appellant now claims that the trial court erred -

- IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER.

- IN NOT GIVING CREDIT TO THE ESTABLISHED FACT THAT THERE IS NO EYEWITNESS TO THE KILLING AND THAT THERE WAS NO CRIMINAL INTENT ESTABLISHED AGAINST THE APPELLANT.[11]

In his brief, appellant contends that no one witnessed the stabbing of the victim. Hence, he argues that his culpability was not proved beyond reasonable doubt. At the same time, appellant also asserts that there was a fight between him and the victim, wherein he defended himself but did not stab the victim.[12]

For the State, the Office of the Solicitor General avers that: (1) appellant was identified by a prosecution witness as the assailant; (2) the victim's utterance to Demetrio Candilosas that he was stabbed by appellant is admissible as part of the res gestae, if not a dying declaration; (3) the flight of appellant after the incident is indicative of his guilt; (4) there was no improper motive on the part of the prosecution witnesses when they testified against appellant; and (5) appellant in effect admitted stabbing and wounding the victim.

At issue is whether or not the witnesses' testimonies were credible and sufficient to establish the guilt of appellant beyond reasonable doubt.

To begin with, we had to peruse closely the records of the case. Appellant's claim that no one witnessed the stabbing incident is belied by the records. Prosecution witness Armando Ramirez testified under oath that it was

appellant who inflicted the fatal wound with a balisong which had been concealed in appellant's left sock. [13] This witness categorically stated that he was about two feet from the victim and appellant.[14] After the stabbing, the witness saw appellant run away.[15] Worthy of note, no one directly contradicted the testimony of Ramirez.

Ramirez was an unbiased witness, without any improper motive to falsely testify for or against anyone. Both appellant and Ramirez testified that they were friends.[16] Given the circumstances, Ramirez' testimony is entitled to full faith and credit. [17]

Furthermore, prosecution witness Demetrio Candilosas testified on trial that as the victim staggered into his house, he declared that he had been stabbed. When asked who had stabbed him, the victim identified appellant as the culprit. [18] While the direct examination of Candilosas was not subjected to cross-examination, it is nonetheless admissible in evidence as counsel for appellant waived cross-examination of this witness.[19]

While Candilosas himself did not see the actual stabbing, the victim's revelation to him of the name of appellant as the assailant could be considered as a dying declaration. Such ante mortem statement is evidence of the highest order because at the threshold of death, all thoughts of fabricating lies are stilled. [20] The utterance of a victim made immediately after sustaining serious injuries may be considered the incident speaking through the victim.[21] It is entitled to the highest credence.

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

Appellant claims self-defense but at the same time denies involvement in the fatal stabbing. His illogical stance that he did not stab the victim does not faze his vigorous assertion that he was merely defending his own life and limb. He adds that the prosecution has failed to establish any ill motive nor intent to commit a crime. However, he also insists that he only tried to grab from the victim the knife that eventually killed him. [23]

As pointed out by the Solicitor General, the posture of the accused is a *mélange* of defenses: accident, self-defense and unawareness that a mortal wound had been inflicted upon the victim, each of which are mutually exclusive. Accident presupposes lack of intention to stab the victim, while self-defense presumes voluntariness, induced only by necessity.[24] As to his defense of "accident," according to the prosecution, a person who accidentally injures another does not perceive any aggression that must be repelled by force. A person who says he stabbed another person accidentally or in self-defense cannot at the same time pretend he did not know he had stabbed the other.[25]

Appellant's claim of lack of motive, however, does not preclude his conviction. It is judicial knowledge that persons have been killed or assaulted for no reason at all.[26] Besides, proof of motive in a criminal case becomes relevant and essential only when the identity of an assailant is in question.[27] This, in our view, is not so in the present case, since Armando Ramirez positively identified appellant as the malefactor.

The testimony of defense witness, Bienvenido Porlaje, does not fortify appellant's allegation of innocence. Porlaje testified that on the night of December 25, 1988, he joined a drinking session with one Badong, Armando (Ramirez), "Bulldog", Danny, Leonardo (Bastuten) and the appellant. He heard a commotion inside the victim's house and went inside to investigate, only to find appellant and the victim fighting. Appellant was holding a knife. Thereafter, he saw him run away from the house. According to Porlaje, appellant went inside the house of the victim to awaken the latter so as to continue their drinking spree.[28]

On cross-examination, however, Porlaje retracted his earlier statement that he was part of the drinking group, claiming instead that he was just a neighbor of the victim. When asked who among the group present went inside

the house of the victim, he first answered that he did not know any of them. When pressed for an answer, he finally said that Ramirez went inside the house.[29] These contradictions, inconsistencies and incongruities in Porlaje's testimony merely undermine appellant's defense.

The trial court found that the stabbing of the victim was attended by treachery. Appellant stabbed the victim just as the latter descended from his house. According to witness Ramirez, there was no previous altercation between the victim and appellant. Appellant had concealed the balisong in one of his socks prior to the stabbing.[30] The victim could not have anticipated that appellant would attack him. He had just awakened after sleeping late on Christmas eve. Clearly, the attack on the victim was carried out with alevosia. There is treachery or alevosia when the attack on an unarmed victim who has not given the slightest provocation is sudden, unexpected, and without warning.[31] Even in a case where the victim was stabbed in the front part of his body, we have ruled that such frontal attack is treacherous when it is sudden and unexpected, and the victim is unarmed.[32]

In the present case, however, we find that dwelling is not a generic aggravating circumstance. Ramirez witnessed the stabbing incident outside the victim's house, while Demetrio Candilosas testified that the victim staggered into his own house after he had been stabbed.[33] Hence, the crime did not occur inside the victim's dwelling. In addition, the presence of the aggravating circumstance of dwelling was not alleged in the information.[34]

As to the appropriate penalty, the attendance of treachery has qualified appellant's offense to murder, and without aggravating or mitigating circumstances, the penalty of reclusion perpetua has been properly imposed.

WHEREFORE, the decision of the Regional Trial Court of Malolos, Bulacan, Branch 22, dated May 29, 1996, in Criminal Case No. 2303-M-91 is AFFIRMED. Appellant Felixberto Lao-as is declared GUILTY beyond reasonable doubt for the MURDER of Leonardo Bastuten. Appellant is sentenced to RECLUSION PERPETUA and ordered to pay the heirs of Leonardo Bastuten the amount of P50,000.00 as death indemnity with 6% interest from the filing of the information on November 29, 1991 until fully paid. Costs against appellant.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 13-30.

[2] Id. at 30.

[3] Id. at 4.

[4] Variouslly spelled in the records as Candalisas, Candilosas, and Candelesa.

[5] Rollo, pp. 97-99.

[6] Records, p. 24.

[7] Also spelled as Bastutin in her signature in the Sworn Statement, Records, p. 5.

[8] Rollo, pp. 13-16.

[9] Id. at 16-19.

[10] Id. at 30.

[11] Id. at 58.

[12] Id. at 57.

[13] TSN, November 16, 1994, pp. 6 and 9.

[14] Id. at 8.

[15] Id. at 11.

[16] TSN, September 13, 1995, p. 15; TSN, November 16, 1994, p. 19.

[17] *People vs. Payot*, 308 SCRA 43, 62-63 (1999).

[18] TSN, March 21, 1995, p. 9.

[19] Records, p. 158.

[20] *People vs. Rada*, 308 SCRA 191, 204 (1999).

[21] *People vs. Montilla*, 211 SCRA 119, 128 (1992).

[22] *People vs. Ebrada*, 296 SCRA 353, 366 (1998).

[23] Rollo, p. 57.

[24] *People vs. Carlos*, 115 Phil. 704, 706 (1962).

[25] Rollo, p. 116.

[26] *People vs. Benito*, 303 SCRA 468, 477 (1999).

[27] *People vs. Bautista*, 308 SCRA 620, 641 (1999).

[28] TSN, December 6, 1995, pp. 5-9.

[29] Id. at 9-11.

[30] TSN, November 16, 1994, pp. 6-9.

[31] *People vs. Adoviso*, 309 SCRA 1, 16 (1999).

[32] *People vs. Belaro*, 307 SCRA 591, 607 (1999).

[33] TSN, November 16, 1994, p. 8; TSN, March 21, 1995, p. 7.

[34] Records, p. 2.

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