

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICOLAS BAHENTING, ALIAS “COLAS,” ACCUSED-APPELLANT.

G.R. No. 127659. February 24, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated October 18, 1996, of the Regional Trial Court of Barili, Cebu (Branch 60), finding accused-appellant Nicolas Bahenting guilty beyond reasonable doubt of murder and sentencing him to death and to indemnify the surviving spouse of Remegio Rivera in the amount of P50,000.00.

The information[2] in this case alleged -

That on or about the 6th day of March, 1996, at about 4:00 o'clock in the morning, more or less, at Barangay Basak, Municipality of Badian, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot with the use of a firearm Remegio Rivera, hitting the victim on his chest which caused his death thereafter.

Accused-appellant pleaded not guilty to the charge,[3] whereupon trial commenced.

The prosecution presented three witnesses: the victim's widow Generosa Rivera, his son Eduardo, and the doctor who conducted the postmortem examination.

Generosa Rivera testified[4] that she and her husband resided at Barangay Basak, Badian, Cebu; that they were farmers, planting corn and camote (sweet potato) on their land, and that they had nine children named Eduardo, Erlinda, Jovencio, Renato, Ana Marie, Annabel, Marcelo, Roel, and Gauden. According to Generosa, in the morning of March 6, 1996, at about 4 a.m. while she was in their house preparing breakfast, she heard a shot and, when she turned around, she saw her husband Remegio Rivera, who was at her back, falling down to the ground. Generosa claimed that when she rushed to her husband and asked him what had happened, he answered in a "very clear voice" that he had been shot by accused-appellant Nicolas Bahenting. Generosa said that their three children who were with them, Annabel, Roel, and Gauden, were still asleep and did not hear the commotion in the house.

Generosa testified that Nicolas Bahenting was a barangay tanod whose house was "near" theirs, being around 100-200 meters away; that accused-appellant harbored some resentment against them so much so that her son Eduardo was prohibited by accused-appellant from passing near his house. Testifying on the impact of her husband's death on her, Generosa said she was very worried because "I'm the one left . . . to earn a living for my children"; that her husband was buried on March 7, 1996, the day after he had been killed; that she spent P8,000.00 for the wake and burial; that their house was located in the mountain and that there was no electricity there; and that at the time of the shooting one could not see outside the house because it was dark.

The next witness for the prosecution was Dr. Urduja B. Espiritu. She had been the municipal health officer of Badian, Cebu for eight years. She conducted an examination on the corpse at around 10 a.m. of March 6, 1996,

shortly after Remegio Rivera was killed. The results of her examination were stated in her report, as follows:

POST MORTEM FINDINGS

Victim: Remegio Rivera, 48 yrs. old, Male, married, from Basak, Badian, Cebu

Date, time, place of incidence: March 5 [should be March 6], 1996, 4 Am; Basak, Badian, Cebu

Date, time, place of examination: March 5 [should be March 6], 1996, 10 Am, Basak, Badian, Cebu

Examination requested by: SPO4 Eutiquio M. Arances - Deputy COP Badian, Cebu

Examination conducted by: Urduja Binghay-Espiritu MD. - MHO Badian, Cebu

Findings:

Chest:

- semicircular wound about 0.5 cms. in diameter with blackish discoloration at its periphery, located at the right side of the chest about 9 cms lateral to the mid-sternal line 2 cms. below the level of the right nipple and 2 cms. laterally

Probable Cause of Death:

Hypovolemic shock, Irreversible secondary to Hemorrhage Int. & Ext. 2° Gunshot wound, chest, right side.

Prepared by:

(Sgd.)

Dr. Urduja B. Espiritu M.D.

MHO-Badian[5]

Dr. Espiritu also signed the victim's death certificate[6] which gave the immediate cause of his death as "hypovolemic shock," the antecedent cause as "Hemorrhage, Internal & Ext.," and the underlying cause as "Gunshot wound, chest."

Dr. Espiritu testified that the assailant could have been more or less 24 inches away from the victim when he shot the latter.[7]

The last witness for the prosecution was the victim's son Eduardo Rivera. Eduardo testified[8] that he used to pass by the house of accused-appellant in going to the house of his parents from his (Eduardo's) house; that on March 3, 1996 accused-appellant gave him (Eduardo) marijuana seedlings to plant in his farm; that when his father learned about this he told Eduardo not to do what accused-appellant wanted him to do and instead to "let Nicolas Bahenting plant the seedlings [so] he will be the one to be arrested alone." According to Eduardo Rivera, accused-appellant resented these remarks of his father and "got very angry" every time he saw Eduardo pass by his farm.

Accused-appellant Nicolas Bahenting was the sole witness for the defense. His defense was alibi. He described the victim as a neighbor, who was "not a friend, just an acquaintance." He claimed that, on March 5, 1996, he went to Badian to fish and returned home late at night; that the next day (March 6, 1996), he got up at 6 a.m. when it was "already bright." He then went to his farm to inspect his plants for two hours, after which he brought his cow to the barangay center for the inspection by the Department of Agriculture. It was there, he said, where he was arrested by some Philippine National Police (PNP) officers. Accused-appellant denied that he had asked Eduardo Rivera to plant marijuana in the latter's farm and that he had prohibited Eduardo from using a pathway

near accused-appellant's farm because Eduardo had refused to plant the marijuana seedlings. Accused-appellant said he and Eduardo agreed that the latter would take another route in going to his parents' house "because my house might get burned because its roof is made of cogon." But, he said, he had no "serious problem" with either Eduardo or his father.

After trial, the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of murder qualified by treachery and evident premeditation with the aggravating circumstance of dwelling and sentenced him to death. Hence, this appeal.

First. We have reviewed the records of this case and find that accused-appellant's guilt has been fully established.

Accused-appellant basically contends that his guilt has not been proven beyond reasonable doubt. But the most telling evidence against accused-appellant is the dying declaration of the victim that it was accused-appellant who had shot him. The requisites for the admissibility of ante mortem statements under Rule 130, §37 are: (1) the statement concerns the crime and the surrounding circumstances of the declarant's death; (2) at the time it was made, the declarant was under the consciousness of an impending death; (3) the declarant would have been competent as a witness had he survived; and (4) the declaration was offered in a criminal case for homicide, murder, or parricide in which the declarant was the victim. Dying declarations are considered an exception to the hearsay rule since they are made in extremis, when the declarant is at the point of death. For then, the motive to commit falsehood is improbable and the inclination is only to speak the truth.[9]

In this case, there is no doubt that all four requisites are present. First, Remegio Rivera's statement to his wife Generosa concerned his death as it pointed to accused-appellant as his assailant. Second, he made the declaration under the consciousness of an impending death. Remegio Rivera knew he had been seriously injured as, in fact, he died shortly after he had been shot.[10] Third, Remegio Rivera would have been competent to testify in court had he survived. There is no evidence which indicates otherwise. Fourth, his dying declaration was offered in a criminal prosecution for murder where he was the victim.[11]

Accused-appellant questions the veracity of the aforementioned dying declaration. He argues that "it was not easy" to identify the assailant because it was not even daybreak yet. He points out it was only 4 o'clock in the morning of March 6, 1996 when Remegio Rivera was shot.

It is true that, as Generosa Rivera herself testified, it was dark outside with no electric light to illumine the place.[12] But Remegio was shot inside his house at close range. It was also established that his wife was cooking their breakfast. Naturally, there had to be some source of light inside the house. According to Dr. Espiritu, judging from the gunshot wound suffered by the victim, his assailant was "more or less" only twenty-four (24) inches away from him. Under such circumstances, Remegio Rivera could have identified his assailant, especially since accused-appellant had been their neighbor for almost a year.

Accused-appellant also contends that his alibi should be given credence. For the defense of alibi to prosper, however, the accused must not only prove that he was not at the scene of the crime when it happened but also that it was impossible for him to be there at the time of the commission of the offense.[13] Accused-appellant failed to prove this. By his own admission, the house of the victim was "just near" his house, about half a kilometer away.[14] Nor did accused-appellant deny that he was in the vicinity at the time. His only claim is that he was asleep in his house. It was not, therefore, impossible for him to have gone to the victim's house and to have shot him there.

In any case, accused-appellant's alibi cannot prevail over his positive identification[15] which in this case was even made by the victim himself as he was dying. This positive identification of accused-appellant as the assailant

also does away with the need to prove his motive for committing the crime.[16]

Second. Notwithstanding our finding that accused-appellant is guilty of the killing of Remegio Rivera, we believe that the trial court erred in finding that the killing in this case was attended by evident premeditation and treachery.

For evident premeditation to be considered, the following must be proved: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act.[17]

In this case, no attempt was made by the prosecution to establish the above requisites. There is no proof as to when the plan to kill was made or how the accused-appellant planned and prepared for the killing of the victim or how much time elapsed before said plan was carried out.[18] Thus, evident premeditation was not proven in this case.

On the other hand, for treachery to be present, two conditions must be shown: (1) the employment of means of execution that give the person attacked no opportunity to defend or to retaliate and (2) the deliberate or conscious adoption of the means of execution.[19] Treachery cannot be presumed; it must be proven as fully and as convincingly as the crime itself. Any doubt as to the existence of treachery must be resolved in favor of the accused.[20] Where no particulars are known regarding the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it cannot be established from mere supposition that an accused perpetrated the killing with treachery.[21]

In *United States v. Cruz*,[22] it was held that treachery was not established because "there is no proof as to how the shot which killed [the victim] was fired, and [considering] the long-established doctrine of criminal law and jurisprudence that when there is no proof to justify the manner in which the crime was committed it cannot be insisted that the circumstance of treachery [is] present."

In *People v. Misola*,[23] it was likewise held that treachery was absent since "no one actually saw the details of the assault."

In *People v. Ablao*,[24] the prosecution did not present an eyewitness to the actual shooting. The main prosecution witness, a police lieutenant, only heard a gunshot coming from the canteen. He saw the accused coming out of the canteen carrying a pistol. The Court held:

There being no direct evidence on how the shooting was committed, treachery cannot be appreciated. There are no particulars as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed. (*People v. Bacho*, G.R. No. 66645, March 29, 1989; and *People v. Gaddi*, G.R. No. 74065, February 27, 1989)

The testimony of Dr. Reyes as to the shot in the back of the victim's head is not conclusive proof that there was treachery. The fact that the fatal wounds were found at the back of the deceased does not, by itself, compel a finding of treachery. Such a finding must be based on some positive proof and not merely by an inference drawn more or less logically from hypothetical fact. (*People v. Marciales*, 166 SCRA 436, 449 [1988]) The facts preceding the actual shooting are not in the records.[25]

In *People v. Tiozon*,[26] the wife of the victim testified that she heard two successive gunshots after which the accused came knocking at her door telling her that he had accidentally shot her husband. Together with a companion, she proceeded to the house of the accused where she saw her husband dead. The Court found accused guilty of homicide only because "no witness who could have seen how the deceased was shot was presented.

Absent the quantum of evidence required to prove it, treachery cannot be considered against accused-appellant."

Similarly in this case, the victim's wife did not witness the actual shooting as can be gathered from the following portion of her testimony:

Q:

You were at your kitchen building fire, so your husband was at your back. The window which your husband was opening was at your back. Is that also correct?

A:

Yes sir.

Q:

And when you heard a shot, you're still attending the fire in your kitchen. Is that not correct?

A:

Yes sir.

Q:

So when you heard a shot, your husband who was at the window, was at your back?

A:

Yes sir.

Q:

And you only noticed that there was a sign of somebody falling down?

A:

Yes sir.[27]

From the foregoing, it is clear that there is a gap in the evidence of the prosecution and, hence, the presence of treachery in this case was not established.

As the qualifying circumstances alleged in the information have not been proven, accused-appellant can be found guilty only of homicide.

We agree, however, that the crime was aggravated by the circumstance of dwelling. The victim was killed in his own house. The presence of this aggravating circumstance does not only justify imposing the penalty for the

crime in its maximum period but warrants as well an additional award of exemplary damages pursuant to Art. 2230 of the Civil Code. The amount of P20,000.00 is reasonable.[28] An award of P50,000.00 as moral damages is also justified under Art. 2217 of the Civil Code as the victim's death caused his family mental anguish and serious anxiety.[29] However, the Court cannot award actual damages for the wake and burial of the victim in the absence of any supporting evidence in the record.[30]

One last point. The RTC ordered the P50,000.00 indemnity to be paid to the victim's surviving spouse alone. The award should actually also be given to their nine children who, like their mother, are compulsory heirs of the victim. The same is true with regard to the award of moral and exemplary damages.[31]

WHEREFORE, the decision, dated October 18, 1996, of the Regional Trial Court of Barili, Cebu (Branch 60) is AFFIRMED with the MODIFICATION that accused-appellant is found guilty of homicide and is hereby sentenced to suffer an indeterminate prison term ranging from 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum, and ordered to pay the heirs of the victim Remegio Rivera P50,000.00, as death indemnity, P50,000.00, as moral damages, and P20,000.00, as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Kapunan, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Vitug, J., on official business abroad.

[1]Per Judge Ildefonso B. Suerte, Rollo, pp. 14-17.

[2]Rollo, pp. 6-7.

[3] TSN, p. 1, May 8, 1996.

[4] TSN, pp. 2-21, June 6, 1996.

[5] Exh. B, Records, p. 13.

[6] Exh. A, id., p. 14.

[7] TSN, p. 10, June 13, 1996.

[8] TSN, pp. 6-11, July 9, 1996.

[9]People v. Nialda, G.R. No. 115946, April 24, 1998; United States v. Gil, 13 Phil. 530 (1909).

[10] People v. Apa-ap, Jr., 235 SCRA 468 (1994).

[11] People v. Nialda, G.R. No. 115946, April 24, 1998; People v. Viovicente, G.R. No. 118707, February 2, 1998; People v. Garma, 271 SCRA 517 (1997).

[12] TSN, pp. 17-18, June 6, 1996.

[13] E.g., People v. Castañeda, 252 SCRA 247 (1996).

[14]TSN, p. 5, July 30, 1996.

[15]E.g., People v. Alberca, 257 SCRA 613 (1996).

[16] E.g., People v. Pano, 257 SCRA 274 (1996); People v. Lapura, 255 SCRA 85 (1996).

[17] E.g., *People v. Cabodoc*, 263 SCRA 187 (1996); *People v. Belga*, 258 SCRA 583 (1996).

[18] *People v. Guillermo*, G.R. No. 113787, Jan. 28, 1999; *People v. Patotoy*, 261 SCRA 37 (1996); *People v. Paynor*, 261 SCRA 615 (1996); *People v. Patrolla, Jr.*, 254 SCRA 467 (1996).

[19] E.g., *People v. Compendio, Jr.*, 258 SCRA 254 (1996).

[20] *People v. Ballabare*, 264 SCRA 350 (1996).

[21] *People v. Sumaoy*, 263 SCRA 460 (1996).

[22] 4 Phil. 252, 254 (1905).

[23] 87 Phil 826, 830 (1950).

[24] 183 SCRA 658 (1990).

[25] *Id.*, p. 668.

[26] 198 SCRA 368 (1991).

[27] TSN, p. 17, June 6, 1996.

[28] *People v. Gutierrez, Jr.*, G.R. No. 116281, Feb. 8, 1999.

[29] TSN, pp. 8, 15, June 6, 1996; *People v. Verde*, G.R. No. 119087, Feb. 10, 1999; *People v. Gutierrez*, G.R. No. 116281, Feb. 8, 1999; *People v. Aringue*, 283 SCRA 291 (1997).

[30] *David v. Court of Appeals*, G.R. Nos. 111168-69, June 17, 1998; *Fuentes, Jr. v. Court of Appeals*, 253 SCRA 430 (1996).

[31] See *People v. Gallardo*, 1 SCRA 124 (1961).

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