

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL M. CATAPANG, ACCUSED-APPELLANT.

G.R. No. 128126. June 25, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Lucena City, Branch 54 convicting accused Rafael M. Catapang of murder, and sentencing him to reclusion perpetua and to indemnify the heirs of the victim, Rictorino Aventurado, in the amount of P50,000.00 as unrealized income due to his death, P50,000.00 as death indemnity, P65,000.00 as actual expenses for burial and other expenses and P20,000.00 as moral damages.

On August 10, 1994, Provincial Prosecutor Dante H. Diamante of Quezon filed with the Regional Trial Court, Quezon an information charging accused Rafael M. Catapang with murder, committed as follows:

“That on or about the 2nd day of July 1994, at Poblacion, Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber handgun, with intent to kill, with treachery and taking advantage of nighttime to facilitate the commission of an offense, did then and there willfully, unlawfully and feloniously attack, assault and repeatedly shoot with said firearm one Rictorino Aventurado, thereby inflicting upon him gunshot wounds on different parts of his body, which directly caused his death.

“That the accused attacked, assaulted and shot with said firearm said Rictorino Aventurado suddenly and unexpectedly without giving him any opportunity to defend himself or to escape.”[2]

At the arraignment on August 24, 1994, accused pleaded not guilty.[3] Trial ensued.

At around 9:30 in the evening of July 2, 1994, Rictorino Aventurado boarded a tricycle parked along Cabunyag Street, Candelaria, Quezon. The tricycle driver, Jonathan Garcia, started revving the motor of the tricycle. Suddenly, Garcia heard gunshots coming from the passenger side of the tricycle. He turned his head and saw a person pointing a .45 caliber gun at his passenger, Rictorino Aventurado. Frightened, Garcia sprang from his tricycle and ran towards the other side of the street, near a restaurant. When he was around six (6) meters from the tricycle, he looked back and saw the gunman shoot successively at Rictorino Aventurado. The area was sufficiently illuminated by a Meralco post located about one (1) meter from the tricycle.[4]

After shooting at least seven times, the assailant left the scene, still holding his gun. Garcia cautiously returned to his tricycle and noticed that Aventurado was seriously wounded. Thus, Garcia lost no time in bringing the victim to Bolanos Hospital. However, the victim was pronounced dead on arrival.[5]

At around 9:30 in the evening of the same day, security guard Joselito Conyado was on duty at Shoeland Complex and Department Store, together with fellow guard, Pedrito Mandigma. Suddenly, they heard successive gunshots coming from Narra Restaurant, about forty (40) meters away. They rushed to the street corner and saw a person

carrying a handgun from a distance of more or less seven (7) meters. The person with the gun was running. He passed a 40-watt fluorescent light. Then, he accelerated his speed and disappeared.

That same night, policemen conducted an investigation and asked accused Catapang to walk in the light in front of the police station to see if witnesses Conyado and Mandigma, who were hidden, could recognize him. The two security guards saw accused Catapang and identified him as the person they saw earlier with a gun.

On July 3, 1994, the tricycle driver, Jonathan Garcia, went to the police station to give his statement. From a line-up, he identified accused Rafael Catapang as the person who shot his tricycle passenger.

Dr. Felix Encanto, in his post-mortem examination of Rictorino Aventurado, found that the deceased sustained 11 entry wounds and 9 exit wounds. From the location of the wounds and the powder burns, the assailant was higher or at the right side of the victim and was just an arm stretch away.[6] The cause of death was cardio respiratory arrest due to multiple gunshot wounds.[7]

Artemio Bermido, Chief of Police of Candelaria, Quezon brought accused Catapang to the PNP Crime Laboratory Service for paraffin test on July 3, 1994. Accused Catapang was found positive for gun powder residue.[8]

Riza Aventurado, wife of the deceased, expressed sadness over the death of her husband, stating that her loss cannot be compensated in monetary terms. The death resulted in lost earnings and three orphaned children. She enumerated her expenses for the burial of her husband.[9] However, she merely presented the receipt for the coffin she bought in the amount of twenty-five thousand (P25,000.00) pesos.[10]

Accused Rafael Catapang denied the charge against him. He alleged that at the time of the killing, he was sleeping at home. He admitted testing positive for paraffin but explained that it was because he fired the gun of one of the guests at a baptismal party he attended that morning.[11]

Apparently, on July 2, 1994, the grandson of Domingo Vidar was baptized. Accused Rafael Catapang, a friend of Domingo Vidar, attended the baptism. At the lunch party that followed, accused Catapang drank a few alcoholic drinks. He met Ruben Carandang and started taking an interest in the .38 caliber firearm tucked under his waist. Accused Catapang asked if he could fire the gun. Carandang agreed and handed over the gun to accused Catapang. The latter held the gun for a few seconds and then fired 4 shots upward. Then, he returned the gun to Carandang and continued drinking until he went home.[12]

Accused Catapang came home at 7:00 in the evening, slightly drunk. He then went to sleep. His wife, Daisy Catapang, later fell asleep beside him. At around 11:00 in the evening, Daisy heard someone knocking on the door. She awakened her husband. Accused Catapang left her side and opened the door. The person at the door asked him to go to the municipal hall, upon invitation of the Chief of Police. Accused Catapang proceeded to the municipal hall and returned to his house after a few minutes. He then went back to sleep.[13]

The next day, at around 10:00 in the morning, several policemen arrived at the house of accused Catapang and took him to the police station. He stated that his house was merely two blocks or 150 meters from the place where the killing occurred.[14]

On December 27, 1995, the trial court rendered a decision convicting accused Catapang of the crime charged.[15] The dispositive portion of the decision states, to wit:

“WHEREFORE, all the foregoing considered, the Court finds accused Rafael M. Catapang guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code and with no aggravating or mitigating circumstance present, hereby sentences him to reclusion perpetua and to pay the costs.

“The accused is ordered to pay the heirs of the deceased Rictorino Aventurado the following amounts: P50,000.00 as unrealized income due to his death, P50,000.00 as death indemnity, P65,000.00 as actual expenses in connection with Aventurado’s burial and other expenses and P20,000.00 for moral damages.

“SO ORDERED.

“Lucena City, December 27, 1995.

(sgd.) Guillermo R. Andaya

Judge.”[16]

Hence, this appeal.[17]

Accused-appellant contends that the trial court erred in giving credence to the testimony of prosecution witness Jonathan Garcia. The entire incident happened swiftly that the witness could not have taken a good look at the gunman.

We disagree. The witness recognized the assailant because of the light from an electric post that illuminated the area. Moreover, there was no evidence of ill-motive on the part of the witness to falsely impute a serious charge against accused-appellant. Where there is nothing to indicate that the witness for the prosecution was actuated by any improper motive, the presumption is that he was not so actuated and his testimony is given full faith and credit.[18]

Further, the trial court considered the witness to be credible. Having had the distinct opportunity of directly observing the demeanor of the witnesses, the trial court is in a better position to ascertain whether or not he or she is telling the truth.[19] Thus, the trial court’s appreciation of credibility of a witness is given great weight.[20] The eyewitness testified in a candid, straightforward manner in relating the event that occurred on the night in question. We find no reason to overturn the findings of the trial court.

The medico-legal findings, which revealed the position of the gunman through the location of the wounds, likewise supported the testimony of the eyewitness.

Accused-appellant, however, insists that he was sleeping at his residence on the night of the incident and was not near the area of the killing. For alibi to prosper, he must not only prove that he was not at the scene of the crime at the time of the incident, but also that it was impossible for him to be at the scene of the crime.[21] In this case, accused-appellant admitted that his house was only about one hundred fifty (150) meters away from the scene of the crime. Also, his wife fell asleep and could not be certain whether her husband remained at home during the time the crime occurred. In light of the positive identification of accused-appellant as the perpetrator of the crime, his defense of alibi cannot be sustained.[22]

Considering the positive identification and other evidence against accused-appellant, there is no doubt that he was the killer of Rictorino Aventurada.

The trial court convicted accused-appellant of murder, qualified by treachery and attended by the aggravating circumstance of nighttime.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[23] The essence of treachery is swift and unexpected attack on an unarmed victim.[24] In this case, the accused-appellant shot the unsuspecting victim while the latter was on board a tricycle. While inside the tricycle, the victim could not put up any defense against

the unexpected attack on his person. Undoubtedly, treachery attended the commission of the offense.

The aggravating circumstance of nighttime cannot be appreciated separately as it is absorbed in treachery. Nighttime was evidently an integral part of the peculiarly treacherous means and manner adopted to ensure the execution of the crime, or that it facilitated the treacherous character of the attack.[25]

The existence of treachery qualifies the killing to murder. Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is reclusion perpetua to death. Considering the absence of any mitigating or aggravating circumstances in the commission of the offense, the lesser penalty of reclusion perpetua shall be applied.[26]

As to damages, the award of P65,000.00 as actual damages must be reduced for lack of sufficient proof. The Court can only give credence to actual expenses supported by receipts and which appear to have been genuinely expended in connection with the victim's death.[27] The wife of the deceased presented only the receipt for the coffin in the amount of twenty five thousand (P25,000.00) pesos. Thus, we consider this amount as actual damages.

We sustain the trial court's award of fifty thousand (P50,000.00) pesos as indemnity for the death of the victim. No further proof is necessary other than the fact of death of the victim and the accused's responsibility therefor.[28]

However, we increase the amount of moral damages to fifty thousand (P50,000.00) pesos, considering the suffering that the heirs of the victim had to undergo because of the unexpected death of Rictorino Aventurado.

The grant of fifty thousand (P50,000.00) pesos as unrealized income due to the death of the victim lacks factual basis. Such indemnification partakes of the nature of actual damages, which must be duly proved.[29] No evidence was presented as proof of the income earned by the deceased at the time of his death, except for the bare assertion of his wife. "For lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence unreliable statement, is not enough." [30] Thus, the amount awarded as unrealized income must be deleted.

WHEREFORE, the decision of the Regional Trial Court, Quezon[31] convicting accused-appellant Rafael Catapang of murder and sentencing him to reclusion perpetua is hereby **AFFIRMED**, with **MODIFICATION** as to the amount of damages awarded to the heirs of the victim, Rictorino Aventurado. Actual damages is reduced to twenty-five thousand (P25,000.00) pesos and moral damages is increased to fifty thousand (P50,000.00) pesos. The amount of fifty thousand (P50,000.00) pesos death indemnity is sustained.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. 94-563, Judge Guillermo R. Andaya, presiding.

[2] RTC Record, p. 2.

[3] Certificate of Arraignment, RTC Record, p. 28.

[4] TSN, September 30, 1994, pp. 2-8.

[5] TSN, September 30, 1994, pp. 6-11.

- [6] TSN, December 7, 1994, pp. 3-7.
- [7] Medical Report, RTC Record, pp. 113-114.
- [8] TSN, October 26, 1994, pp. 8-9; Chemistry Report No. C-039-94, RTC Record, p. 120.
- [9] TSN, January 6, 1995, pp. 5-9; TSN, January 13, 1995, pp. 2-4.
- [10] Receipt dated July 6, 1994, RTC Record, p. 117.
- [11] TSN, September 8, 1995, pp. 2-14.
- [12] Testimony of Domingo Vidal, TSN, August 11, 1995, pp. 2-7; Testimony of Ruben Carandang, TSN, June 14, 1995, pp. 2-5.
- [13] Testimony of Daisy Catapang, TSN, May 24, 1995, pp. 4-6.
- [14] TSN, September 8, 1995, p. 15.
- [15] RTC Record, pp. 166-178.
- [16] RTC Record, pp. 177-178.
- [17] Notice of Appeal, RTC Record, p. 179.
- [18] *People v. Lamacang*, 324 SCRA 254, 267 [2000].
- [19] *People v. Palec*, G. R. No. 135331, November 23, 2000.
- [20] *People v. Bello*, 327 SCRA 1, 7 [2000].
- [21] *People v. Mansueto*, G. R. No. 135196, July 31, 2000.
- [22] *People v. Quillosa*, 325 SCRA 747, 756 [2000].
- [23] *People v. Catuiran, Jr.*, G. R. No. 134761, October 17, 2000; *People v. Honra, Jr.*, G.R. Nos. 136012-16, September 26, 2000.
- [24] *People v. Aglipa*, G. R. No. 130941, August 3, 2000.
- [25] *People v. Bergonio, Jr.*, G. R. No. 133981, September 13, 2000.
- [26] Article 63 (2), Revised Penal Code.
- [27] *People v. Cual*, 328 SCRA 623, 648 [2000]; *People v. Ricafranca*, 323 SCRA 652, 666 [2000].
- [28] *People v. Paraiso*, 319 SCRA 422, 440 [1999]; *People v. Cayago*, 312 SCRA 623, 639 [1999].
- [29] *People v. De Vera*, 312 SCRA 640, 670 [1999].
- [30] *People v. Ereño*, 326 SCRA 157, 170 [2000]; *People v. Sanchez*, 313 SCRA 254, 272 [1999].
- [31] In Criminal Case No. 94-563.

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