

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE NARRA Y ARIOLA, ACCUSED-APPELLANT.

G.R. No. 128225. June 17, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the consolidated/joint decision[1] of the Regional Trial Court of Makati, Branch 134 finding him guilty beyond reasonable doubt in Criminal Case Nos. 92-4651 and 92-4652 for murder and homicide, respectively, appellant Dante Narra y Ariola comes to this Court on appeal.

In Criminal Case No. 92-4651, the Information[2] charges appellant with murder defined and penalized under Article 248 (as amended by R.A. 7659) of the Revised Penal Code allegedly committed as follows:

"That on or about the 8th day of July, 1992, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with .45 caliber pistol, conspiring and confederating with a companion whose true identity and present whereabouts is still unknown and both of them mutually helping and aiding with one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one BEETHOVEN GRAN y TAMPARONG on the different parts of his body, thereby inflicting upon him serious and mortal wounds, which directly caused his death.

CONTRARY TO LAW."

In Criminal Case No. 92-4652, the Information[3] charges appellant with homicide defined and penalized under Article 249 of the Revised Penal Code allegedly committed as follows:

"That on or about the 8th of July, 1992, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a .45 caliber (sic) pistol, conspiring and confederating with a companion whose true identity and present whereabouts is still unknown and both of them mutually helping and aiding with one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one MARY GRACE MANLANGIT y CINCO on the left ear (head) thereby inflicting upon the latter gunshot wounds which directly caused her death.

CONTRARY TO LAW."

When arraigned, the accused, with the assistance of counsel, entered a plea of not guilty to both charges. The two cases were tried jointly.

From the evidence of the prosecution consisting of the testimonies of Isidro Amangca, Lita Manuel, Dula Bautista, Brigida Vilorio, Ernesto Manlangit, Allan Gran, Virginia Gran, Dra. Patricia Dulay Tabangcura and Dr. Alberto Reyes, the following are established:

At about 9:40 a.m. of July 8, 1992, while Isidro Amangca was selling bananas outside the talipapa at Buting, East Rembo, Fort Bonifacio, Makati,[4] an owner-type jeep driven by Beethoven Gran (Gran) stopped right in front of

him.[5] Moments later, appellant who was on board a motorcycle driven by an unidentified man suddenly pulled a .45caliber firearm,[6] aimed and fired a shot at Gran who was still seated at the driver's seat of his jeep.[7] The shot missed Gran who quickly jumped out of the jeep and landed on the sidewalk by the talipapa, only to be shot again by appellant[8] who, at this juncture, was already in a standing position.[9] Again, the shot missed Gran who ran towards and sought shelter in the nearby store of Ernesto Manlangit.[10] Appellant followed suit[11] and fired several shots, hitting Gran as well as Manlangit's 4-year old daughter Mary Grace who was inside the store.[12] Upon seeing the seemingly lifeless body of Gran, appellant hurriedly fled together with his unidentified companion on board the motorcycle[13] and headed towards the direction of Guadalupe.[14]

Gran died on the spot while Mary Grace was brought to the Fort Bonifacio General Hospital in Makati where she was pronounced dead on arrival.

In the afternoon also of July 8, 1992, Amangca gave an eyewitness account[15] of the incident before the Makati Police. He later gave a description of the face of "the gunman" — basis of the cartographic sketch prepared by the NBI.[16]

On July 18, 1992, after appellant was arrested, Amangca positively identified appellant from a line-up of "suspects" as the gunman.[17]

From the autopsy report[18] of Dr. Alberto M. Reyes, Medico-Legal Officer of the National Bureau of Investigation, it appears that Gran died of gunshot wounds on the face, chest and buttocks, while Mary Grace died of a gunshot wound on the head.

Appellant who interposed the defense of alibi summarizes in his brief[19] his version as follows:

"x x x Accused Dante Narra testified that the deceased, Beethoven Gran, was a close friend of his 'buddy' for several years while in the service of the Philippine Constabulary; that during his lifetime, Beethoven confided to him his problems — like the threats to his (Beethoven) life by unidentified callers as he was a member of the RAM, the killing of a muslim by the name of Edwin Kahal for which the latter's family threatened him (Beethoven), and the most serious threat came from a gunrunning syndicate, of which a certain 'Dok' was a member; that on the early morning of July 8, 1992, he left his residence at Murphy, Quezon City, and went to the house of Beethoven Gran on board his owner type jeep to get a spare tire; that in the house of Beethoven, he met Beethoven's wife and he introduced himself; that when he was told that Beethoven was not around, he left at 8:30 that morning and went home to Murphy, Quezon City, arriving thereat at 9:00 o'clock in the morning; that he went to a repair shop to have the electric fan of his jeep repaired; and that he left his jeep and returned in the afternoon and met some friends. (TSN, pp. 22-23, March 4, 1994)

Accused also declared that he came to know of the death of Beethoven Gran only on the afternoon of July 9, 1992 through a newspaper and that he did not go to the wake of Beethoven Gran because he was forewarned of the threats to his life. He also claimed that from July 8 to the time he was detained at the Makati Municipal Jail on July 18, 1992, he was reporting for duty (TSN, pp. 15-20, May 13, 1994); that on July 18, 1992, he was ordered by his Officer to report to the Makati Police Station; that he was made to participate in a line up where the witnesses to the killing of Beethoven Gran were to identify the gunman; that in said line up, the witnesses failed to identify the gunman; that Sgt. Baldado told the witnesses to point to a person and a second line up was formed; and that in the second line up, he was pointed to as the gunman. He alleged that after he was pointed to as the gunman, he was told to remove his uniform and he was locked up in jail. x x x"

Finding for the prosecution, the trial court convicted appellant by Decision of August 29, 1996, the dispositive portion of which reads:

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

In Criminal Case No. 92-4651, this Court finds accused DANTE NARRA guilty beyond reasonable doubt of the crime of Murder and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA; he is also ordered to pay the heirs of Beethoven Gran the sum of P100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and the amount of P59,772.70, as actual damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

In Criminal Case No. 92-4652, this Court finds accused Dante Narra guilty beyond reasonable doubt of the crime of Homicide and he is hereby sentenced to an indeterminate sentence of SIX (6) years and ONE (1) day, of Prison Mayor, as the minimum penalty to TWELVE (12) years and ONE (1) day of Reclusion Temporal, as the maximum penalty; the accused is ordered to pay the heirs of Mary Grace Manlangit the sum of P100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, the amount of P49,355.00 as actual damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED."[20]

Hence, the present appeal anchored on the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING DUE WEIGHT AND CREDENCE TO THE INCONSISTENT, CONTRADICTORY, IMPOSABLE (sic) AND DOUBTFUL TESTIMONIES OF THE FIVE (5) PRINCIPAL PROSECUTION WITNESSES TO THE SERIOUS PREJUDICE OF THE ACCUSED-APPELLANT'S SUBSTANTIAL RIGHTS.

II

THE TRIAL COURT ERRED IN REJECTING THE DEFENSE OF ALIBI INTERPOSED BY ACCUSED-APPELLANT INSPITE OF THE FACT THAT THERE WAS NO SUFFICIENT PROOF THAT HE WAS POSITIVELY IDENTIFIED BY ANY OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

As in most criminal cases, the issue is one of credibility.

Appellant, claiming that the prosecution failed to prove his guilt beyond reasonable doubt, draws attention to alleged inconsistent, conflicting and contradictory testimonies of prosecution witnesses, he highlighting the following: Amangca's testimony that after appellant first shot Gran who at the time was behind the wheels of his jeep, appellant immediately left the scene with his companion on board a motorcycle,[21] whereas in his subsequent testimony, he declared that appellant shot the victim several times;[22] Amangca's testimony that appellant, after the first shot, immediately alighted from the motorcycle, whereas in his subsequent testimony, he declared that appellant was still on board the motorcycle when he fired the second shot;[23] Amangca's different accounts regarding appellant's footwear and length of his pants; storeowner Manlangit's testimony that he did not see the face of the assailant on the first shot as he only heard the shot,[24] whereas in his testimony on cross-examination, he declared that he saw the face of the assailant as soon as the latter fired the first shot;[25] and Manlangit's testimony that he saw the entire shooting incident,[26] whereas in his subsequent testimony he stated that he was not able to see the incident.[27]

And appellant questions the credibility of Dula Bautista who testified only after eight (8) months from the occurrence of the incident; of Lita Manuel, who like Dula Bautista, was not listed as a witness for the prosecution and only volunteered to give her statement several months after the incident, upon the prodding of witness Manlangit; and of Brigida Vilorio, a close friend of the Manlangits, whose testimony is suspicious and doubtful as she surfaced only after one year from the occurrence of the incident.

The appeal is bereft of merit.

The "inconsistency" belabored by appellant on at what stage of the incident he boarded the motorcycle was correctly brushed aside by the trial court:

"FISCAL LALIN:

Q [to Isidro Amangca]:

When [appellant] alighted from the motorcycle, where did the accused go?

[Defense counsel] ATTY. VILLENA:

Your Honor, the witness has been answering, on the previous questions that right after the incident he boarded the motorcycle...

COURT:

That was after he fired all these shots that's why he sped away ..." [28] (Emphasis supplied).

With respect to Amangca's questioned testimony on when appellant alighted from the motorcycle and his recollection of appellant's footwear and length of his pants, any variation thereon is too insignificant to erode his credibility. It bears noting that right after the incident, Amangca picked up the empty bullet shells from the scene of the crime which he handed to the police, a reflection of his presence of mind and keen attention both of which enhance his capacity for correct observation. And he, also after the incident, gave a vivid, credible account of what transpired. What is important is that he positively identified appellant as the gunman soon after he was arrested.

Amangca's credibility as a witness having been unimpeached and the credibility of his testimony having been unsuccessfully impeached, discussion of the corroborative testimony of the other prosecution witnesses becomes unnecessary. Suffice it to state that any discrepancies in their testimonies are too trivial to affect their credibility and in fact render them more believable as they preclude the possibility of rehearsal.

For witnesses are not expected to recall with accuracy or uniformity every single detail of the incident, given the frailty of human memory. As long as their testimonies dovetail on material points, the courts may not just disregard them.

It bears stressing that the incident occurred in broad daylight, hence, conditions of visibility were favorable. The identification of appellant as the malefactor should thus be trusted.[29]

In light then of the positive identification of appellant as the perpetrator of the crimes, his alibi is weightless, especially given his failure to show the physical impossibility of his presence at the crime scene.[30] As correctly found by the trial court:

"xx xx xx

In the cases at bar, the accused did not adduce evidence to prove that it was impossible for him to be present at the scene of the crime at the time of its commission. The distance between the repair shop in Murphy, Quezon City, where accused claims he was at the time of the commission of the crime, and the scene of the crime at the 'Talipapa' at East Rembo, Fort Bonifacio, Makati, can be negotiated in less than one hour by motorcycle. The accused, himself, declared that on July 8, 1992, he returned to his residence at 9:00 o'clock. Thereafter, he left

and went to the repair shop to have the electric fan of his jeep repaired. He left his jeep at the shop and returned in the afternoon (TSN, pp. 22-23, March 4, 1994). Thus, it is very possible that after leaving his jeep at the repair shop, the accused boarded a motorcycle and went to the 'Talipapa' at East Rembo, Fort Bonifacio, Makati, and upon seeing Beethoven Gran, shot and killed him, in the manner as described by the prosecution witnesses. Thereafter, he left the scene of the crime and probably returned to the shop as the accused alleged. xx xx

"The accused and his wife claimed that he reported for duty in the afternoon of July 8, 1992. However, the official records of the unit to which the accused was assigned show that the accused had not reported for duty from July 5, 1992 up to July 17, 1992 (Exh. "Z"). The evidence adduced to show that the accused did not report for duty to his Battalion on the above-mentioned dates was at all controverted. xx xx" (Underscoring supplied)

The guilt beyond reasonable doubt of appellant notwithstanding, this Court finds that the killing of Gran was neither treacherous nor premeditated to qualify it to murder. The circumstances which attended the killing rule out the presence of treachery and even evident premeditation.

"The essence of treachery is that the attack comes without a warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no change to resist or escape. xx xx The victim was undoubtedly caught unaware and had no chance of putting up any defense. xx xx"[31] (Emphasis in the original).

That Gran was able to elude the first and the second shots and was able to scamper for safety as he headed towards the nearby store of Manlangit negates the notion that he was caught unaware and totally defenseless.

On to the civil aspect of the case.

Jurisprudence instructs that the award of actual damages must be duly substantiated by receipts.[32] In Criminal Case No. 92-4651, the trial court awarded the amount of P59,772.70 representing expenses incurred as a result of Gran's death, while in Criminal Case No. 92-4652, it awarded the amount of P49,355.00 representing expenses incurred as a result of Mary Grace's death.

An examination of the documentary evidence submitted by the prosecution shows, however, that of the total amount awarded to the heirs of Gran, only the amount P15,707.75 is properly receipted,[33] hence, the amount of P44,064.95 must be disallowed from the actual damages awarded. And of the amount awarded to the heirs of Mary Grace, only the amount of P26,850.00 representing burial and funeral expenses[34] is duly receipted, hence, the amount of P22,505.00, the details of which are inputed in a handwritten memorandum of alleged expenses during the wake of Grace Manlangit,[35] must be disallowed.

On top of his liability for actual damages, appellant is likewise liable to pay to the heirs of each victim the amount of P50,000.00 as civil indemnity[36] which needs no proof other than the victim's death.[37]

As to the award by the trial court of P100,000.00 to the heirs of each victim representing moral damages, consistent with prevailing jurisprudence, the amount must be reduced to P50,000.00.

WHEREFORE, the joint decision on review is hereby **AFFIRMED** with **MODIFICATION**. As modified, the judgment reads:

1. In Criminal Case No. 92-4651, appellant DANTE NARRA y ARIOLA is hereby found **GUILTY** beyond reasonable doubt of Homicide and he is hereby sentenced to suffer an indeterminate penalty of Six (6) Years and One (1) Day of prision mayor as minimum, to Seventeen (17) Years and Four (4) Months of reclusion temporal as maximum. He is **ORDERED** to pay the heirs of Beethoven Gran y Tamparong the amount of P15,707.75 as actual damages, P50,000.00 as moral damages, and P50,000.00 as death indemnity.

2. In Criminal Case No. 92-4652, appellant DANTE NARRA y ARIOLA is found GUILTY beyond reasonable doubt of Homicide and he is hereby sentenced to suffer an indeterminate penalty of Six (6) Years and One (1) Day of prision mayor as minimum, to Fourteen (14) Years Eight (8) Months and One (1) Day of reclusion temporal as maximum. He is ORDERED to pay the heirs of Mary Grace Manlangit the amount of P26,850.00 as actual damages, P50,000.00 as moral damages and P50,000.00 as death indemnity.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Records at 529-540.

[2] Id. at 1-2.

[3] Id. at 31-32.

[4] TSN, September 4, 1992 at 6-7.

[5] Id. at 8-9, 13.

[6] Information, Records at 1-2.

[7] TSN, testimony of Amangca, September 4, 1992 at 13.

[8] Id. at 18, 22; TSN, testimony of Lita Manuel, October 21, 1992 at 15.

[9] Id. at 14-16.

[10] TSN, testimony of Lita Manuel, October 21, 1992 at 16.

[11] TSN, testimony of Amangca, September 4, 1992 at 22.

[12] TSN, testimony of Lita Manuel, October 21, 1992 at 16.

[13] TSN, testimony of Isidro Amangca, September 4, 1992 at 23.

[14] TSN, testimony of Dula Bautista, March 24, 1993 at 24.

[15] Exhibit "B", Records at 257.

[16] Exhibit "C", id. at 258.

[17] Exhibit "D", id. at 259.

[18] Exhibits "U"- "U-4," id. at 315-316.

[19] Rollo at 54-55.

[20] Records at 539-540.

[21] TSN, September 4, 1992 at 17.

[22] Id. at 20-23.

[23] Id. at 17-19.

[24] TSN, November 10, 1993 at 16-17.

[25] Id. at 65.

[26] Id. at 45.

[27] Id. at 45-46.

[28] TSN, September 4, 1992 at 20.

[29] People v. Martinez, 274 SCRA 259, 270 (1997) cited in People v. Ricardo Napalit y Paral, G.R. Nos. 142919 and 143876, February 4, 2003.

[30] People v. Peleras, 365 SCRA 220 (2001).

[31] People v. Dando, 325 SCRA 406 (2000).

[32] Tomas Hugo v. Hon. Court of Appeals and the People of the Philippines, G.R. No. 126752, September 6, 2002.

[33] Exhibits "L," "N" - "N-1," "N-3," "N-12," "N-13," N-14."

[34] Exhibits "Q" & "U".

[35] People v. Mirador, supra.

[36] People v. Peleras, supra.

[37] People v. Salvador and Salvador, G.R. No. 132481, August 14, 2002.

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