

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR DE LA CRUZ ALIAS "BOYET,"
ACCUSED-APPELLANT.**

G.R. No. 128362. January 16, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 86, Cabanatuan City, finding accused-appellant Dominador De la Cruz, alias "Boyet," guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim Manolito Cauba, alias "Lito," the amounts of P20,000.00 as actual damages and expenses and P80,000.00 as moral damages, and to pay the costs.

The information alleged --

That on or about the 6th day of July 1993, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any justification whatsoever, with intent to kill and with the use of a short, automatic firearm, did then and there, wilfully, unlawfully, feloniously and treacherously assault, attack, and use personal violence upon the person of one MANOLITO CAUBA alias "Lito", by shooting the latter several times, thereby inflicting upon him serious physical injuries which directly caused his death.

CONTRARY TO LAW.^[2]

Upon being arraigned, accused-appellant pleaded not guilty, whereupon he was tried.

The prosecution evidence consists of the eyewitness account of Victorino Castillo and the testimony of Dr. Jun B. Concepcion, medico-legal officer of the City Health Office in Cabanatuan City, who conducted the postmortem examination on the body of Manolito Cauba.

Victorino Castillo, a resident of Pamaldan, Cabanatuan City, was a 15-year old high school student at the time of the incident. He testified that at about 5:30 p.m. of July 6, 1993, he was about to get his carabao near the road in Pamaldan, Cabanatuan City, when he saw Nenita Sahod and the victim Manolito Cauba walking towards the main road. Without warning, he said, from a distance of about two and a half meters, he saw accused-appellant Dominador de la Cruz, alias "Boyet," shoot Manolito Cauba. The victim fell to the pavement face down, but according to Castillo, accused-appellant continued firing at the victim, hitting the latter in different parts of the body. Frightened, Victorino ran home. He told his parents about the incident. His parents went to the scene of the crime and then informed the relatives of the victim that the latter was killed. On the other hand, Victorino Castillo said, he and Tomas Cauba, brother of the victim, proceeded to the barangay hall and reported the matter to the barangay captain.^[3]

The certificate of death (Exh. C)^[4] stated that the cause of death of Manolito Cauba was multiple gunshot wounds on the head, face, chest, and abdomen. The autopsy report dated July 7, 1993 (Exh. A) contained the

following findings:

FINDINGS (Pertinent Only)

HEENT: (+)

Gunshot wound, back of the ear, left as point of entry, 9.5 in diameter with anterior trajectory towards the left cheek area as point of exit, through and through.

(+)

Gunshot wound, occipital area, (L) as point of entry with anterior trajectory towards the nose bridge as point of exit, through-through.

(+)

Gunshot wound, submental area (R) as point of entry towards the interior portion of the lip, (R) as point of exit, through-through.

(+)

Gunshot wound, lateral side of the neck (L) with trajectory towards the opposite side as point of exit, through-through.

NOTE: (+)

Burned gun-powder on the anterior neck.

(+)

Gunshot wound, anterior chest, 3 inches para-sternal area (L) as point of entry with trajectory towards the back, infra-scapular area (R) as point of exit; through and through penetrating the superior vena cava.

(+)

Gunshot wound left upper arm as point of entry with trajectory towards the midline penetrating the (L) apical area with the lung piercing the vertebral column and spinal cord through-through, level 4th thoracic vertebral.

(+)

Gunshot wound (L) buttock area (superior eliac area) as point of entry with trajectory towards the opposite side midially (L) (anterior superior eliac area) as point of exit (through-through) penetrating the small intestine through-through 2 - portion.

(+)

Gunshot wound (L) lower area just above the wrist posteriorly as point of entry with trajectory towards the lateral side of same area, through-through.

(+)

Gunshot wound, front (R) side, as point of entry with trajectory towards the (R) anterior chest (just below the tip of the zyphoid process as point of exit (through - through) penetrating the liver (R) lobe & diaphragm.

CAUSE OF DEATH

MULTIPLE PENETRATING GUNSHOT WOUND ON THE HEAD, FACE, CHEST AND ABDOMEN.

Dr. Jun B. Concepcion testified that the incised punctured wounds were caused by gunshots. There were ten entry

and exit wounds. In addition to gunshot wounds on the head, face, chest, and abdomen of the victim, there were gunshot wounds in the small intestine, liver, brain, as well as the last spinal cord and vertebral column. All of the wounds were fatal.[5]

Accused-appellant denied he killed the victim and interposed the defense of alibi. He testified that although he was a resident of Pamaldan, Cabanatuan City, he was in Maddela, Quirino, from May 10, 1992 up to January 23, 1996, working in the Corpuz Furniture and Sash Factory. He was arrested by the police in Caalibangbangan, Cabanatuan City on January 23, 1996. Accused-appellant testified that it would take five to six hours to travel from Maddela, Quirino to Cabanatuan City. He added that he had no previous misunderstanding with the victim.[6]

Lydia Galvez Corpuz, who owned the furniture factory in which accused-appellant was working, corroborated accused-appellant's claim that from May 10, 1992 up to January 23, 1996, the latter was in Maddela, Quirino. Corpuz claimed that she saw accused-appellant in Maddela, Quirino on July 6, 1993. According to Corpuz, although accused-appellant accompanied her to make deliveries of furniture to Cabanatuan City, this was on other dates, to wit: September 20, 1993, April 29, 1994 and December 21, 1994.[7]

On November 7, 1996, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered, convicting the accused Dominador de la Cruz alias "Boyot" guilty beyond reasonable doubt of the crime of MURDER defined in, and penalized under Article 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Said accused is hereby ordered to indemnify the heirs of the deceased Manolito Cauba in the sum of P80,000.00 as moral damages and the sum of P20,000.00 as actual damages and expenses, without subsidiary imprisonment in case of insolvency, and to pay the costs.

IT IS SO ORDERED.[8]

Hence, this appeal.

Accused-appellant contends:

- THAT THE DECISION IS CONTRARY TO LAW AND EVIDENCE.
- THAT PATENT INCONSISTENCIES ARE IGNORED BY THE COURT.

First. Accused-appellant points out alleged inconsistencies in the testimony of Victorino Castillo, the principal witness of the prosecution, suggesting that Castillo did not really witness the shooting of Manolito Cauba. Accused-appellant quotes the following portion of the transcripts of stenographic notes of the testimony of Castillo:

FISCAL:

Q After Manolito Cauba fell down to the ground, what else happened?

A I do not know anymore, I just ran away, Sir.

Q You just ran away towards where?

A Towards home, Sir.

Q Did you reach home?

A Yes, Sir.

Q What about the carabao, were you able to recover it?

A No, Sir.

....

Q When you saw Manolito Cauba fall down, you ran away?

A Not yet, the accused shot Manolito Cauba three more times, Sir.

Q Do you want to imply to the court that at the first shot, Manolito Cauba did not fall down to the ground?

A He fell down, Sir.

Q When he fell down, did you see the three shots undertaken?

A I heard, Sir.

Q You heard the three shots, did you not see?

A I also saw him shooting, Sir.

Q You ran away after the accused have fired the three more shots?

A Nenita Sahod and I ran away, Sir.

....

ATTY. MAGBITANG:

Q You ran away at the first gunshot or after the several gunshots?

A After the several gunshots, Sir.

Q

When this Dominador de la Cruz shot Manolito Cauba for the first time, you said that you saw him shoot Manolito Cauba, will you please tell us what happened to this Manolito Cauba?

A Yes, Sir.

Q What happened?

A He fell down facing the ground, Sir. 'Bumulagta'.

Q What do you mean by 'bumulagta', face down or face up?

A Facing the ground, Sir.

Q When the three shots were fired, the shots were at the back of Manolito Cauba?

A Yes, Sir.

Q And all the shots - did you see the shots at the back of the deceased?

....

COURT:

Objection overruled. Witness may answer.

WITNESS:

A Yes, Sir, because he was shot while facing the ground.

ATTY. MAGBITANG:

Q And you were at a distance of about 10 meters from the accused Dominador de la Cruz?

A Yes, Sir, 10 meters.

Q So, you are an eyewitness to that shooting?

COURT:

He said that.

ATTY MAGBITANG:

Q And all the shots were lodged at the back of the victim?

A The first gunshot was fired at the victim while they were facing each other, Sir.

Q And the succeeding gunbursts or second gunbursts were lodged at the back of the victim?

A Yes, Sir, because he was shot while facing down.

Q And you are certain about that?

A Yes, Sir.[9]

But Castillo did not really say he ran away after the first shot was fired. What he said is that he ran after seeing Cauba fall to the ground face down. At that point, it is quite possible that three shots had been fired in rapid succession. At all events, if the defense wanted to impeach his credibility, the witness should have been confronted with the alleged prior inconsistent statement and given a chance to explain.

Second. Accused-appellant contends that Victorino Castillo's testimony that after he was shot Manolito Cauba fell to the ground with his face down is contrary to the medical certificate (Exhs. C and C-1) that the victim suffered gunshot wounds in the head, face, chest, and stomach.

This contention is likewise without merit. What Dr. Jun B. Concepcion said was that "the victim suffered gunshot wounds which penetrated the head, face, chest, and abdomen." [10] Dr. Concepcion did not say that these wounds could not have been suffered by the victim if he was lying face down. With respect to the gunshot wounds on the face or chest or abdomen, it must also be remembered that the witness said that the victim was shot face to face. What is more, Dr. Concepcion said that the victim "also suffered gunshot wounds on the last spinal and vertebral column." [11] This statement is even more categorical. It shows that the victim was fired at while he was lying on the ground with his face down. The wounds were directly caused by gunshots.

Third. Accused-appellant contends that Victorino Castillo did not really see the killing of Manolito Cauba but was simply present as witness because the first prosecution witness, Ernesto Talavera, had been killed and there was no other prosecution witness. Accused-appellant points out that Victorino Castillo was not presented as a witness at the preliminary investigation and his name was not even mentioned during the said proceedings.

Castillo was only 15 years old at the time of the incident. He was afraid to testify, and his fear was not unfounded. He had every reason to stay away from the investigation of the killing. Talavera, who testified as an eyewitness for the prosecution at the preliminary investigation on July 29, 1993, was killed by unknown persons.[12] In

addition, accused-appellant was at large. Although a warrant for his arrest was issued on August 4, 1993, the warrant was returned unserved on August 24, 1993 on the ground that "subject cannot be found at given address." [13] In fact, because of the failure of the authorities to apprehend accused-appellant, the case was ordered archived without prejudice to its revival as soon as accused-appellant was arrested. [14]

Accused-appellant was finally arrested on January 23, 1996. [15] Only then did Victorino Castillo feel safe. Accompanied by his uncle Edilberto Aguilar, he came out in the open and testified as a witness.

Additionally, it should be stated here that the fact that Victorino Castillo's name was not mentioned during the preliminary investigation of the case did not preclude the prosecution from presenting him as a witness during the trial. The non-inclusion of some of the names of the eyewitnesses in the information filed before the trial court does not preclude the prosecutor from presenting them during the trial. There is thus no basis for the allegation that this fact indicates that Castillo's presentation as an eyewitness was a mere "afterthought." [16]

Fourth. Although accused-appellant is from Pamaldan, Cabanatuan City, he claims that from May 10, 1992 up to January 23, 1996 he was in Maddela, Quirino working in a furniture factory and that he went to Cabanatuan City only on three occasions, to wit: September 20, 1993, April 29, 1994, and December 21, 1994, in order to make deliveries of furniture. For this purpose, the defense presented in evidence sales invoices dated September 20, 1993 (Exh. 1), April 29, 1994 (Exh. 4) and December 21, 1994 (Exh. 8) and job orders allegedly showing that on those dates the Corpuz Furniture and Sash Factory, in which accused-appellant was employed, made deliveries to customers in Cabanatuan City.

The claim is completely false. The sales invoice marked Exh. 1 shows the delivery of pieces of furniture to the Banal Furniture in Guagua, Pampanga, while the sales invoice marked Exh. 4 shows the redelivery of some of the pieces of furniture mentioned in Exh. 1 from Pampanga to Banal Furniture in Batangas. Exh. 8 is a redelivery of some of the pieces of furniture back to the Pampanga store of the Banal Furniture. None of the deliveries made was to Cabanatuan City. Moreover, since the sales invoices bear dates after July 6, 1993, they cannot prove that accused-appellant did not go to Cabanatuan City on or before that date. Indeed, even if accused-appellant went to Cabanatuan City on the dates indicated in the sales invoices, this fact would not negate the possibility that he also went home to Cabanatuan City at some other time, including on July 6, 1993, when the incident in question happened.

The fact is that the prosecution witness, Victorino Castillo, categorically stated that he saw accused-appellant in Pamaldan, Cabanatuan City on July 6, 1993 and that on that occasion accused-appellant shot Manolito Cauba several times. Castillo knew accused-appellant as the latter had been a resident of Pamaldan, Cabanatuan City for quite a long time. [17] Against such positive identification of accused-appellant, the latter's alibi cannot prevail. [18]

Victorino Castillo had no ill motive to testify falsely against accused-appellant. Even accused-appellant admitted on cross-examination that Victorino Castillo bore him no grudge. [19] The rule is settled that where there is nothing to indicate that a witness was actuated by improper motive his positive and categorical declarations on the stand, made under solemn oath, should be given full faith and credence. [20]

Fifth. The trial court ordered accused-appellant to indemnify the heirs of the victim Manolito Cauba moral damages in the amount of P80,000.00 and P20,000.00 as actual damages and expenses.

The award of damages should be modified. The award of P20,000.00 as actual damages and expenses must be deleted for lack of evidence presented to support it. Under Art. 2199 of the Civil Code, for such an award to be made, there must be competent proof, such as receipts, showing the expenses incurred during the wake and burial

of the deceased.[21]

On the other hand, in line with our rulings in several cases,[22] the heirs of the victim should be paid the amount of P50,000.00 as civil indemnity. Unlike the award of actual damages, the award of civil indemnity need no proof other than the death of the victim. In addition, while the heirs of the victim are entitled to moral damages, the award must not exceed P50,000.00 as fixed by our recent rulings.[23] The purpose of making such award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[24]

WHEREFORE, the decision of the Regional Trial Court, Branch 86, Cabanatuan City, finding accused-appellant Dominador De la Cruz, alias "Boyet," guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay the heirs of the victim Manolito Cauba, alias "Lito," the amount of P50,000.00 as civil indemnity and moral damages in the amount of P50,000.00. The award of P20,000.00 as actual damages is deleted.

SO ORDERED.

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

[1] Per Judge Raymundo Z. Annang.

[2] Rollo, p. 10.

[3] TSN, pp. 2-10, Aug. 13, 1996.

[4] RTC Records, p. 61.

[5] TSN, pp. 2-8, July 17, 1996.

[6] TSN, pp. 5-6, Oct. 1, 1996.

[7] TSN, pp. 3-6, Sept. 5, 1996.

[8] Rollo, pp. 25-26.

[9] TSN, pp. 4-10, Aug. 13, 1996.

[10] TSN, p. 8, July 17, 1996 (emphasis added).

[11] Id.

[12] TSN (Dr. Jun B. Concepcion), p. 2, July 17, 1996.

[13] RTC Records, p. 6.

[14] Id., p. 7.

[15] Id., p. 9.

[16] *People v. Jamiro*, 279 SCRA 290 (1997).

[17] TSN, pp. 2-3, Aug. 13, 1996.

[18] *People v. Atrejenio*, 310 SCRA 229 (1999); *People v. Bahenting*, 303 SCRA 558 (1998); *People v. Alberca*, 257 SCRA 613 (1996).

[19] TSN, p. 8, Oct. 1, 1996.

[20] *People v. Suplito*, 314 SCRA 493 (1999); *People v. Payot*, 308 SCRA 43 (1999).

[21] *People v. Vital*, G.R. No. 130785, September 29, 2000; *People v. Gallo*, 318 SCRA 157 (1999); *People v. Lachica*, 316 SCRA 443 (1999); *People v. Apelado*, 316 SCRA 422 (1999)

[22] E.g., *People v. Samolde*, G.R. No. 128551, July 31, 2000; *People v. Suplito*, *supra*; *People v. Bautista*, 312 SCRA 475 (1999); *People v. Panida*, 310 SCRA 66 (1999).

[23] *People v. Ladit*, G.R. No. 127571, May 11, 2000; *People v. Orillo*, G.R. No. 125896, May 11, 2000; *People v. Suplito*, *supra*; *People v. Espanola*, 271 SCRA 689 (1997).

[24] *People v. Verde*, 302 SCRA 690 (1999).

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