

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO PALABRICA Y BARCUMA, ACCUSED-APPELLANT.

G.R. No. 129285. May 07, 2001

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PER CURIAM:

This case is here on automatic review of the decision,[1] dated February 26, 1997, of the Regional Trial court, Branch 58, of San Carlos City, Negros Occidental, finding accused-appellant Roberto Palabrica y Barcuma guilty of murder for the killing of Vic Jun Silvano[2] on August 17, 1995 and sentencing him to death and ordering him to pay the deceased's mother, Conchita Silvano, P50,000.00 as civil indemnity and P11,169.00 as damages for medicines, transportation of the cadaver, and funeral expenses.

It appears that during a storm on October 28, 1995, accused-appellant escaped from jail.[3] He subsequently surrendered,[4] but, on June 12, 1996, he again escaped from jail and since then has been at large.[5] Nevertheless, the trial of the case proceeded and judgment was rendered in absentia by the trial court. In accordance with the ruling in *People vs. Esparas*,[6] the automatic review of the trial court's decision must proceed despite the absence of accused-appellant.

The antecedents facts are as follows:

On September 4, 1995, an information for murder was filed against accused-appellant alleging -

"that on or about 7:00 o'clock p.m., August 17, 1995 at Ylagan Street, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with a bladed weapon, with intent to kill and with treachery and evident premeditation, did, then and there, willfully, unlawfully, and feloniously attack, assault, and use personal violence upon the person of one VIC JUN SILVANO, by stabbing the latter with the use of said weapon, hitting him at the right portions of his abdomen, thereby inflicting upon him physical injuries described as follows:

-Stab wound (R) hypochondriac 8 cm. Long with evisceration of intestines, lacerating (R) lobe liver, thru & thru, 10 cm. anteriorly & 6 cm. Inferiorly lacerating body & hilus of (R) kidney with severe hemorrhage shock secondary;

-Stab wound 2.5 cm. Long (R) lumbar level of 2[nd] lumbar vertebra paravertebral area, muscle deep, directed supero laterally.

And which injuries resulted in the death of said Vic Jun Silvano.

CONTRARY TO LAW."[7]

At his arraignment, during which the information was read to him in Cebuano, accused-appellant, assisted by counsel, pleaded not guilty.[8] Accordingly, trial was held.

As counsel for accused-appellant informed the trial court that his client was invoking self-defense, accused-appellant was required to present his evidence first[9] in accordance with Rule 119, Section 3(e) of the

1988 Rules of Criminal Procedure[10] which provides that "when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly."

Accused-appellant testified solely in his defense. Accused-appellant is a pedicab driver. His family owned a store along the national highway leading to San Carlos City, Negros Occidental. According to accused-appellant, on August 16, 1995, at around 10 o'clock in the evening, the deceased, Vic Jun Silvano, was in his store for some beer. The deceased had a quarrel with another customer. Accused-appellant said he tried to pacify the parties and told them to leave, but the deceased resented this and pulled out a knife. According to accused-appellant, he broke a bottle and, upon seeing this, the deceased ran away. Accused-appellant claimed that the deceased returned with a slingshot (Indian pana) which he used, hitting accused-appellant's father in the mouth. Nonetheless, according to accused-appellant, he did not get angry at the deceased. He merely reported the matter to the police who entered the incident in the police blotter.

Accused-appellant said that the next day, August 17, 1995, at around 6 o'clock in the morning, he was told by his sister that the deceased and some companions were looking for him. He, therefore, looked for the deceased and found him on Ylagan Extension Street, playing billiards with some companions. This was at around 7 o'clock in the evening. According to accused-appellant, the deceased was facing the billiard table holding a cue stick. When the deceased saw him, accused-appellant asked what it was that he wanted. The deceased said, "So you are here," even as he dropped the cue stick he was holding and tried to draw the knife tucked in his waist. Accused-appellant claimed that he then stabbed the deceased in the stomach with the knife he (accused-appellant) was carrying and ran away because the deceased had several companions. When asked why the deceased had two stab wounds[11] when, according to accused-appellant, he stabbed him only once, accused-appellant said that he had heard that after the deceased had been stabbed, he fell down near a pedicab and that he may have sustained injuries as a result.[12]

The prosecution presented an eyewitness, Domingo Lombreno, Jr., to refute accused-appellant's claim. Lombreno, Jr. was the caretaker of the billiard hall where the incident happened. He testified that at around 7 o'clock in the evening of August 17, 1995, Silvano played a billiard game with Andrew Limpio. As the two were known in the neighborhood to be among its best players, a crowd of around 15 people gathered to watch them play. Lombreno, Jr. kept score. While the game was in progress, Lombreno, Jr. said he noticed accused-appellant shoving people out of his way as he walked towards the deceased, who was then waiting for his turn at the billiard table. Lombreno, Jr. knew accused-appellant because they were neighbors and he saw him occasionally in the billiard hall. He said that when accused-appellant arrived, he said to Silvano, "So you are here!" Then accused-appellant stabbed the deceased and quickly made his exit. According to Lombreno, Jr., the deceased was unarmed. (Four days after the incident, Lombreno, Jr. executed an affidavit (Exh. 1)[13] attesting to what he had seen.) During the trial, he drew a sketch showing the relative positions of accused-appellant, the deceased, and himself just before the stabbing (Exh. A-1)[14] and the location of the billiard hall where the incident took place (Exh. A).[15] He also positively identified accused-appellant as the person who had stabbed the deceased.[16]

The other witness for the prosecution was the deceased's mother, Conchita Silvano, who testified that she spent a total of P60,000.00 for the operation of her son, medicines, the cost of transporting his body to Badian, Cebu, and his funeral. She also testified that she had to hire a private prosecutor for P50,000.00 and spent P3,000.00 in litigation expenses.[17]

On February 26, 1997, the trial court rendered a decision finding accused-appellant guilty of murder qualified by treachery with the aggravating circumstance of evident premeditation. The dispositive portion of its decision reads:

"WHEREFORE, premises considered, the Court hereby finds the accused ROBERTO PALABRICA Y

BARCUMA GUILTY beyond reasonable doubt of the crime of MURDER. There being one (1) aggravating circumstance and nary any mitigating circumstance, the Court hereby sentences him to suffer the capital punishment or the death penalty pursuant to Article 63, No. 1 of the Revised Penal Code.

"Having been found criminally liable, the Court, pursuant to Article 100 of the revised Penal Code, also hereby finds the accused civilly liable and hereby sentences him to indemnify Mrs. Conchita Silvano, mother of the deceased, as follows:

(1)

P50,000.00 for the life of her son Vic Jun Silvano, pursuant to the latest decisions of our Supreme Court; and

(2)

P11,169.00, for medicines, transfer of cadaver and funeral expenses incurred by the victim's mother in connection with what happened to said victim in the instant case as covered by Exhs. "B" to "N-1" of the prosecution...."[18]

On March 18, 1997, the trial court issued a warrant of arrest against accused-appellant.[19]

Hence this review of the decision of the trial court.

The preliminary question is whether we can render a decision considering that accused-appellant is still at large. As stated at the beginning, review of the trial court's decision is required under the ruling in *People vs. Esparas*[20] which held that automatic review in death penalty cases despite the absence of the accused is mandatory considering that "nothing less than life is at stake and any court decision must be as error free as possible." The question raised in that case, whether a judgment of conviction could also be rendered, became moot and academic as the accused was rearrested while her case was pending appeal in this Court.[21] To be sure, in two later cases,[22] in which the accused were also sentenced to death by the trial court, this Court rendered judgment despite the fact that the accused had not been rearrested "in the best interest of justice." [23] It must be noted, however, that in those cases, the decision was favorable to the accused. In one case, the accused was acquitted,[24] while in the other case, the penalty imposed by the trial court was reduced.[25] Thus the question remains whether in the absence of the accused a decision can be rendered affirming a death sentence imposed by the trial court.

We hold that it can. We find no good reason to withhold judgment pending the rearrest of accused-appellant after reviewing the decision of the trial court. Rule 122, Section 10 of the Revised Rules of Criminal Procedure in fact provides for "automatic review and judgment" (emphasis added). Consequently, if such review shows that accused-appellant is guilty, his conviction must be affirmed either in toto or with modification, just as his acquittal must be declared if a review shows he is innocent. There is no sense in holding that the automatic review of the decision must proceed even if the accused has absconded short of pronouncing his guilt in the event the evidence warrants affirmance of the decision of the trial court. Accordingly, we shall proceed with the disposition of this appeal.

Two justices reiterate their Dissents in *People vs. Prades*,[26] *People vs. Raquino*,[27] and *People vs. Contreras*,[28] that in death penalty cases in which the appellants absconded, this Court should await their arrest and custody before rendering judgments on their appeals in order not to give them better treatment than convicts sentenced to suffer lesser penalties, whose appeals are dismissed upon their escape from confinement.

Accused-appellant's brief assigns as the lone error allegedly committed by the trial court the fact that it failed to appreciate the mitigating circumstance that accused-appellant allegedly committed the crime with which he is charged "in the immediate vindication of a grave offense" committed against his father.[29]

First. Accused-appellant claims that he killed Vic Jun Silvano in self-defense. To begin with, the findings of fact of the trial court are entitled to respect as the trial court has had the opportunity to observe the deportment of the witnesses during trial. Indeed, the trial court correctly gave credence to the evidence of the prosecution that it was accused-appellant who committed the aggression. Between the self-serving testimony of accused-appellant and that of Domingo Lombreno, Jr., the trial court correctly found the latter more credible. Lombreno, Jr. is a disinterested witness. No evidence was shown that he had any motive to testify falsely.[30] His testimony is consistent with the evidence showing that the deceased sustained two stab wounds.[31] It is improbable that accused-appellant would have been able to stab the deceased twice without himself suffering any injury if, as accused-appellant claimed, both of them simultaneously pulled out their respective knives.[32] It is more probable that from the start accused-appellant was on the offensive and that the deceased was unarmed, as the eyewitness Domingo Lombreno, Jr. said.

Accused-appellant claims that the second stab wound suffered by the deceased could have been caused when the latter fell to the ground.[33] This is improbable as the injuries suffered by the deceased are not the type caused by a fall.

Second. There was treachery in the commission of the crime as shown by the following: (1) the employment of means of execution which gave the deceased no opportunity to defend himself or to retaliate and (2) the deliberate and conscious adoption by accused-appellant of the means of execution.[34] The deceased Silvano was unsuspecting when attacked as he was waiting for his turn at the billiard table when accused-appellant stabbed him after saying, "So you are here!" The suddenness of the assault rendered the deceased unable to defend himself. Moreover, the weapon used and the nature of the injuries inflicted, showing that accused-appellant aimed at a vital spot of the deceased's body, establish that accused-appellant deliberately adopted the particular mode of attack to ensure the commission of the offense with impunity.[35]

Third. We agree with the trial court that the killing of Silvano was premeditated. Contrary to his claim, accused-appellant had a reason for attacking Silvano. On the night of August 16, 1995, the day before the incident subject of this case, Silvano shot up accused-appellant's store with a slingshot, locally called indian pana, as a result of which accused-appellant's father was hit in the mouth. Although he denied it, accused-appellant could not have helped harboring ill will towards the deceased. Indeed, accused-appellant said that he believed the arrows were intended for him and only by mischance did one arrow hit his father.[36] There is also accused-appellant's admission that on August 17, 1995, from 6 o'clock in the morning until 7 o'clock in the evening, he went around looking for the deceased. He went to many places - at the Ceres terminal, The wharf, San Juan and Endrina Streets - in search of the deceased and did not stop until he found him at the billiard hall on Ylagan Extension Street at around 7 o'clock in the evening.[37] In addition, it is to be noted that accused-appellant armed himself throughout the search with a long knife. All these convince us that the killing of the deceased had been premeditated.

In *People vs. Bonial*,[38] it was held that evident premeditation was established by the fact that the accused therein had no reason to bring a firearm while in search of the victim if his purpose was to return the cock sold to him by the victim and recover his downpayment. The Court held that the accused actually had murder in his heart since earlier the victim had accused him of stealing his fighting cock. In this case, accused-appellant's claim that he carried a knife merely to protect himself is belied by the fact that he stabbed the deceased as soon as he saw him.[39]

Indeed, accused-appellant had practically an entire day to reflect on the consequences of his act. Yet, he clung to his determination to kill the deceased as seen in his sudden attack on the victim at 7 o'clock in the evening of August 17, 1995. Thus, the following elements of evident premeditation: (1) the time when the accused

determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act[40] were established in this case. In *People vs. Bolivar*,[41] evident premeditation was appreciated on the basis of facts showing that accused-appellants had been looking for the victim, whom they believed had been among those who had attempted to harm them, and that they simultaneously attacked the victim from behind when they found him walking on the road. Evident premeditation was also found in *People vs. Quilang*[42] on the basis of findings that accused-appellant was looking for the victim and that he shot her as soon as he found her.

Fourth. Accused-appellant claims that the mitigating circumstance of immediate vindication of a grave offense should have been appreciated in his favor. The circumstance cannot be appreciated where, as here, the accused had sufficient time to recover equanimity.[43] For in this case, the incident at the store, from which reason accused-appellant claims he stabbed the deceased, happened the night before. Thus, he had sufficient time to regain his composure. In fact, he sought the assistance of the police.[44] This cannot be reconciled with his present claim that he acted in the immediate vindication of a grave offense committed against his father.[45]

The killing is murder, qualified by treachery. As the generic aggravating circumstance of evident premeditation was alleged and proven and as there is no mitigating circumstance, the trial court correctly sentenced accused-appellant to death in accordance with Art. 248, as amended by R.A. No. 7659, in relation to Art. 63(1) of the revised Penal Code.

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[46] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

In accordance with current rulings,[47] the trial court should have awarded P50,000.00 as moral damages in addition to the P50,000.00 awarded as civil indemnity for the death of the deceased. The amount of P25,000.00 as exemplary damages should also be given because of the presence of the aggravating circumstance of evident premeditation.[48]

On the other hand, the amount of P11,169.00 awarded by the trial court as actual damages for hospital and funeral expenses should be increased to P14,137.65, this amount being supported by the receipts.[49]

Finally, although it appears that the deceased's father separated from his mother,[50] the award of damages herein should be given to the legal heirs of the deceased, and not only to the deceased's mother.

WHEREFORE, the decision of the Regional Trial Court, Branch 58, of San Carlos City, Negros Occidental, finding accused-appellant Roberto Palabrica y Barcuma guilty of murder and sentencing him to death, is **AFFIRMED** with the modifications that the award of actual damages is increased to P14, 137.65 and that accused-appellant is ordered to pay the legal heirs of the deceased Vic Jun Silvano the further sum of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

Let a warrant issue for the arrest of accused-appellant.

In accordance with Section 25 of R.A. No. 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the President of the Philippines for the possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

Quisumbing, Buena, and De Leon, Jr., JJ., on leave.

Ynares-Santiago, J., abroad on official time.

[1] Per presiding Judge Abraham D. Caña.

[2] Also referred to as "Dido" and "Gido" in various parts of the Records.

[3] Per Report, dated October 30, 1995, of City Warden Hannibal Diaz Garcia; Records, p. 22.

[4] Per Report, dated November 6, 1995, of City Warden Hannibal Diaz Garcia; id., p. 75.

[5] Per RTC Order, dated August 1, 1996; id., p. 76.

[6] 260 SCRA 539 (1996).

[7] Records, p. 1.

[8] Per RTC Order, dated Oct. 10, 1995; id., p. 19.

[9] Per RTC Order, dated Nov. 22, 1995; id., pp. 32-33.

[10] Now Rule 119, Section 11(e) of the revised Rules of Criminal Procedure.

[11] See Information; Records, p. 1.

[12] TSN, January 30, 1996, pp. 6-37.

[13] Records, p. 5.

[14] Id., p. 83.

[15] Id., p. 82

[16] TSN, January 30, 1996, pp. 39-57.

[17] TSN, August 29, 1996, pp. 1-9.

[18] RTC Decision, p. 24; id., p. 111.

[19] RTC Order, dated March 18, 1997; id., p. 114.

[20] Supra at 551 (1996).

[21] See *People vs. Esparas*, 292 SCRA 332, 339 (1998).

[22] *People vs. Contreras*, G.R. Nos. 137123-34, Aug. 23, 2000; *People vs. Raquiño*, 315 SCRA 670 (1999).

[23] *People vs. Raquiño*, supra at 676.

[24] *People vs. Contreras*, supra.

[25] *People vs. Raquiño*, supra.

[26] 293 SCRA 411 (1998).

[27] Supra.

[28] Supra.

[29] Appellant's Brief, p. 1; Rollo, p. 82.

[30] People vs. Bayotas, G.R. No. 136818, Dec. 19, 2000.

[31] Per Information; Records, p. 1.

[32] TSN, January 30, 1996, p. 34.

[33] Id., p. 36.

[34] E.g., People vs. Galvez, G.R. No. 136790, March 26, 2001.

[35] People vs. De la Tongga, G.R. No. 133296, July 31, 2000.

[36] TSN, January 30, 1996, pp. 21-22.

[37] Id., pp. 23-24, 27.

[38] 217 SCRA 653 (1993).

[39] TSN, January 30, 1996, p. 33.

[40] E.g., People vs. Samolde, G.R. No. 128551, July 31, 2000.

[41] 110 Phil. 372 (1960).

[42] 312 SCRA 314 (1999).

[43] People vs. Sambulan, 289 SCRA 500 (1998).

[44] TSN, January 30, 1996, pp. 12 and 22.

[45] See people vs. Evangelista, 256 SCRA 611 (1996).

[46] 267 SCRA 682 (1997).

[47] E.g., People vs. Arrojado, G.R. No. 130492, Jan. 31, 2001.

[48] Art. 2230; People vs. Hilot, G.R. No. 129532, Oct. 5, 2000.

[49] Exhs. B, B-1 to B-8, C, D, E, F, G, H, I, J, K, and M. The receipts marked as Exhs. L and N, respectively submitted by the prosecution in its formal compliance, dated February 20, 1997, are different from those identified and marked in the trial court and, therefore, cannot be considered in the computation. Also excluded are the receipts marked Exhs. N-1 to N-7 as these were not identified an marked during trial.

[50] See TSN (Conchita Silvano), August 29, 1996, p. 2.

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