

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO CANDARE AND OSCAR CARILLO, ACCUSED, OSCAR
CARILLO, ACCUSED-APPELLANT.**

G.R. No. 129528. June 08, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision, dated February 28, 1997, of the Regional Trial Court, Branch 12, Oroquieta City, finding accused-appellant Oscar Carillo guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay P50,000.00 as death indemnity and P30,165.00 as actual damages for funeral expenses to the heirs of Ritchie P. Sumud-ong.[1]

The facts of the case are as follows:

In an amended information, accused-appellant was charged, together with Eduardo Candare, with murder allegedly committed as follows:

That on or about the 10th day of July, 1996, at 6:30 o'clock in the evening or thereabout, in Lower Rizal, Oroquieta City, Philippines, and within the jurisdiction of this Honorable Court, the afore-named accused, in conspiracy with each other and mutually helping one another, and armed with hunting knives, with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously suddenly attack and mutually and simultaneously stab with their said knives one Ritchie P. Sumud-ong, without giving the latter a chance to defend himself, hitting him on his chest, thereby inflicting upon him two (2) penetrating wounds thereon, which directly caused the death of said Ritchie P. Sumud-ong.

Contrary to law with the attendant qualifying circumstance of treachery and the generic aggravating circumstance of abuse of superior strength.[2]

Eduardo Candare evaded arrest,[3] and only accused-appellant was brought to trial. He was arraigned on August 22, 1996, and he pleaded "not guilty." [4]

Two eyewitnesses were presented by the prosecution. Richard Pabate, who is a second cousin of the victim, testified that he and the victim were on their way home after playing basketball at the court in the marketplace (tabo-an)[5] at about 6:30 p.m. on July 10, 1996 when they met accused-appellant and Eduardo Candare. He said he and the victim Ritchie P. Sumud-ong were conversing when, without warning, the two attacked Sumud-ong. The attack was so swift that Richard did not see them thrust their weapons and saw them only after they had already inflicted wounds on their victim. According to Richard, Eduardo Candare used a "flat" knife, while accused-appellant used a small weapon that was round in shape, resembling an ice pick.

After stabbing the victim, accused-appellant and Eduardo Candare ran away. Richard also ran away shouting for help. Although seriously wounded, the victim managed to follow Richard to the store of one Romeo Bacat where he collapsed.

Richard said he had known accused-appellant for a long time and Eduardo Candare for four months before the incident. Candare was a member of the Citizen's Armed Force Geographical Unit or CAFGU in Barangay Victoria, Oroquieta City. Richard said that before the stabbing, he saw accused-appellant and Eduardo Candare having drinks at the store of Romeo Bacat.

Acting on Richard Pabate's report, the police took accused-appellant for questioning.[6]

The other eyewitness for the prosecution was Danilo Anino whose wife is the elder sister of Richard Pabate. Danilo Anino testified that at around 6:30 p.m. of July 10, 1996, he was following Richard Pabate and the victim while walking on the road. He was about five meters from them when accused-appellant and Eduardo Candare attacked the victim with an ice pick and a big knife, respectively. He said that the attack was so sudden that the victim was not able to defend himself. Danilo Anino said he got so scared he ran away and hid behind a coconut tree. He said he testified in this case at the request of the victim's father who said that he (Danilo Anino) should do so having witnessed the stabbing.[7]

Rito Sumud-ong, the victim's father, testified that he spent a total of P30,165.00 (Exh. B)[8] for the wake and other funeral expenses. He, however, did not present any receipt evidencing the same, claiming that the receipts had all been lost.[9]

Dr. Ana Lourdes Tancawan of the Misamis Occidental Provincial Hospital who conducted the medical examination of the victim's cadaver, issued a certificate (Exh. A),[10] dated July 11, 1996, which contained the following findings:

ALCOHOLIC BREATH

= APPROXIMATELY 0.2 CM PROBABLY PENETRATING WOUND AT 5TH ICS (LEFT) ANTERIOR AXILLARY LINE

= APPROXIMATELY 3.5 CM PENETRATING WOUND AT 7TH ICS RIGHT MID CLAVICULAR LINE

DOA SECONDARY TO MULTIPLE STAB WOUNDS

Dr. Tancawan also executed the victim's death certificate (Exh. C)[11] stating that the victim died due to multiple stab wounds. Testifying in court on November 7, 1996, Dr. Tancawan said that the first injury listed in the medical certificate was caused by a sharp, pointed cylindrical instrument. She said that the wound penetrated between the ribs and breached the chest cavity of the victim. As for the second injury, Dr. Tancawan testified that the same was caused by a double-bladed instrument, which probably injured the victim's lungs.[12]

Accused-appellant thereafter took the witness stand and testified in his behalf. He testified that on July 10, 1996, he went to the market. There he met his co-accused Eduardo Candare, who is his second cousin. Candare invited him to have some drinks. Candare got drunk, and so after 20 minutes, they decided to go home to Barangay Victoria. Candare walked ahead, with accused-appellant following. On their way, they met the victim and Richard Pabate. According to accused-appellant, he was three arms' length away when he saw Candare suddenly stab the victim twice with a hunting knife, hitting the victim on the chest. Accused-appellant said he fled because he was afraid of getting involved in the crime.[13]

Other witnesses for the defense, namely Cristito[14] Clavite, Mary Villanueva, Regina Lagane, and Petronilo Floreza, corroborated accused-appellant's claim that Eduardo Candare alone stabbed the victim. All of them said they were on their way home from the market when the incident happened.[15]

The trial court, however, gave credence to the testimonies of the witnesses for the prosecution and found accused-appellant guilty of murder qualified by treachery. The court held:

The Court finds beyond [reasonable] doubt that the facts of the case duly established by the evidence, testimonial and documentary, are as follows: Accused Oscar Carillo and Eduardo Candare, who are residents of the same barangay Victoria, Oroquieta City, were having a drinking spree in a store in the marketplace in barangay Lower Rizal, also in Oroquieta City. They drank "Tanduay" Rhum. When they had had enough, both went home. On their way, they met Ritchie Sumud-ong and Richard Pabate. Ritchie Sumud-ong who also had previously taken an alcoholic drink, unknowingly acted like looking at the two when they were already near each other. Slighted by the act of Ritchie Sumud-ong in looking at them and emboldened by the spirit of the liquor working in them, Oscar Carillo without any warning suddenly thrust his ice pick or similar weapon on the chest of Ritchie Sumud-ong who was unarmed and unaware of the attack, hitting the "5th ICS (left) anterior axillary line" and causing a 0.2 centimeter wound thereat. This was immediately followed with a thrust by Eduardo Candare with his 3-[cm.] wide knife hitting also the chest and causing the 3.5 centimeters wound at the "7th ICS MID clavicular line." The two wounds resulted in the death of Ritchie Sumud-ong.[16]

The dispositive portion of its decision reads:

WHEREFORE, finding him guilty beyond reasonable doubt of the crime of murder, the Court hereby sentences accused Oscar Carillo to suffer the penalty of reclusion perpetua with its accessory penalty, to indemnify the heirs of the late Ritchie Sumud-ong in the sum of P50,000.00 as death indemnity and P30,165.00 as actual damages for funeral expenses and to pay the costs.[17]

Hence this appeal. Accused-appellant contends that -

I. THE TRIAL COURT ERRED IN NOT HOLDING THAT IT WAS ONLY THE OTHER ACCUSED, EDUARDO CANDARE, WHO STABBED THE DECEASED.

II. THE TRIAL COURT ERRED IN NOT HOLDING THAT THE TESTIMONIES OF THE EYEWITNESSES FOR THE PROSECUTION CANNOT BE TOTALLY RELIED ON.

III. THE TRIAL COURT ERRED IN NOT HOLDING THAT THE MEDICAL CERTIFICATE, EXHIBIT "A," DOES NOT SHOW THAT THE SMALL INJURY WAS CAUSED BY AN ICE PICK. [18]

First. The issue in this case is whether the trial court erred in giving credence to the prosecution's version of the incident that not only Eduardo Candare, but accused-appellant as well, was guilty of stabbing the victim.

We think that the trial court correctly found accused-appellant and Candare equally guilty of the fatal stabbing of Ritchie P. Sumud-ong. To be sure, the defense presented no less than five alleged eyewitnesses to the stabbing, including accused-appellant himself, who claimed that only Eduardo Candare inflicted wounds on the victim.

Witnesses, however, are weighed and not counted by numbers.[19] In this case, the testimonies of the witnesses for the defense appear contrary to the physical evidence. As shown by the medical examination, the two stab wounds sustained by the victim had a huge disparity in size: one stab wound had a diameter of only .2 cm., while the other had a diameter nearly 17 times as big or 3.5 cms. (Exh. A).[20] Dr. Ana Lourdes Tancawan, who conducted the medical examination, opined that the two wounds sustained by the victim were caused by two different weapons, one probably an ice pick and the other a hunting knife. She testified:

[PROSECUTOR ALBERT MAGHANOY]

Q. Please read the first injury you indicated on this medico-legal certificate?

A. Approximately 0.2 cm. probably penetrating wound at 5th ICS (left) Anterior Axillary Line; Approximately 3.5 cm. penetrating wound at 7th ICS Right Mid Clavicular Line.

Q. You described in this medico legal certificate the size of the wound which is only 0.2 cm, kindly tell the honorable court the kind of weapon that would cause this injury which has only a diameter of 0.2 cm?

A. Probably a sharp-pointed instrument.

Q. And since it is only 0.2 cm., would you say that the instrument is slim?

A. The diameter is slim.

Q. Could you tell whether that instrument has sharp blade at the sides of the instrument, was it sharp bladed on the sides?

A. Probably not.

Q. So, that kind of instrument was more of a cylindrical sharp-pointed instrument?

A. Yes.

Q. Were you able to determine how deep was the injury?

A. We cannot determine because it is a penetrating wound based on the physical findings.

Q. When you say penetrating wound because this is the word you used in describing this wound, are you saying that the wound had penetrated inside the internal organ?

A. Inside the chest cavity of the patient.

Q. You demonstrate to the court where specifically is this wound located based on your description?

A. This is the axillary line around at this point at the area of the nipple (Witness pointed to the left side near the lower nipple).

Q. In connection with the second injury which you described in this certificate, please demonstrate to the court where is this located?

A. Below the right nipple (witness pointing to the part of the body below the right nipple).

Q. I notice that the wound you described here has a dimension of 3.5 cm. Please tell the court what could be the kind of weapon that was used to cause this kind of injury?

A. The instrument used may be wide, dimensional sharp instrument, the diameter is wide and sharp.

COURT TO THE WITNESS:

Q. When you say wide, you mentioned diameter refers to the circular part of the instrument, can this wound produced by a circular instrument?

A. Probably not.

Q. So what kind of instrument that might have produced the wound?

A. Sharp edge instrument.

Q. Is it a flat iron instrument?

A. Probably a flat iron instrument.

COURT:

Proceed.

PROSECUTOR MAGHANOY

Based on your observation from the wound was it two-bladed flat instrument or single bladed?

A. I guess double bladed instrument.

Q. Considering the significant different of the two wounds, please tell the court whether or not this two wounds were caused by the same instrument?

A. Based on the examination findings, the two wounds were caused by two separate instruments.[21]

Accused-appellant makes much of the fact that Dr. Tancawan used the words "probably," "maybe," and "I guess." It would do well to remind accused-appellant, however, that conviction in criminal cases does not entail absolute certainty; neither does it exclude the possibility of error. What is required is moral certainty or that degree of proof that produces conviction in an unprejudiced mind.[22]

In this case, that requirement has been met. The physical evidence shows that Eduardo Candare could not have been solely responsible for the two stab wounds of the victim as the same were in all probability caused by different weapons, and none of the witnesses for the defense testified that more than one weapon was used by Eduardo Candare in stabbing the victim. The hunting knife that, by most accounts, was used by him was described by the defense witnesses themselves as around an inch or 2.5 cms. wide.[23] It is unlikely, therefore, that it caused the wound .2 cm. in diameter which penetrated the chest cavity.[24] More probably, the weapon which caused such a wound was the ice pick that the prosecution eyewitnesses testified accused-appellant used in stabbing the victim. Conversely, accused-appellant's ice pick, which is a pointed circular shaft, could not have produced the wound 3.5 cms., or more than an inch wide, which was found by Dr. Tancawan to be caused by a double-bladed weapon.[25] The more probable weapon would be Eduardo Candare's hunting knife. The inescapable conclusion is that both accused-appellant and Eduardo Candare had a hand in the stabbing of the victim, using an ice pick and a hunting knife, respectively.

Mute but eloquent testimony to the manifestation of truth, physical evidence ranks high in the hierarchy of evidence.[26] In this case, as the physical evidence is compatible with the testimonies of the prosecution witnesses but inconsistent with the claim of the defense witnesses, the former should prevail. For the same reason, the Court cannot accept as true the affidavit of Eduardo Candare[27] owning sole responsibility for the crime.

There are other inconsistencies in the testimonies of defense witnesses. For example, Regina Lagane testified that Eduardo Candare stabbed the victim, yet she later admitted that she could not have witnessed the stabbing because she was walking ahead of both accused and only learned of the stabbing when she looked back because of the ensuing commotion.[28]

Mary Villanueva's credibility is also in doubt. She testified that she and her husband were walking home "ahead quite a distance" from both of the accused.[29] If this were the case, then she could not have witnessed the stabbing either. When this was pointed out to her during cross-examination, she disingenuously explained that she and her husband were not actually ahead of the accused but that they were two fathoms away on the opposite sides of the road.[30] But even assuming this to be so, this would have hardly given them a good vantage point to witness the stabbing which by all accounts happened all of a sudden.

Petronilo Floreza's testimony, on the other hand, casts doubt on the testimonies of his fellow defense witnesses that they witnessed the incident. He testified that he did not see anyone, except the two accused, the victim, and the latter's companion in the vicinity when the stabbing occurred. Floreza said he saw the incident at a distance of eight meters on a road that runs perpendicular to the road on which the four were passing.[31] His testimony is contrary to the testimonies of Cristito Clavite, Mary Villanueva, and Regina Lagane, who all testified that they were walking on the same road as the accused, the victim, and Richard Pabate.[32]

Moreover, accused-appellant's behavior after the stabbing also betrayed his guilt. He fled from the scene of stabbing. Although he claims he did so for fear that he would be implicated in the stabbing, the fact is that he did not say what he knew until he was taken into custody by the police. As has oftentimes been held, flight is evidence of guilt.[33]

Second. It is contended that the testimony of Richard Pabate cannot be relied upon because of his relationship to the victim. As previously noted, he and the victim were second cousins. Accused-appellant also assails Danilo Anino's credibility, claiming the latter to be "a last minute witness recruited to support the testimony of Richard Pabate, whose testimony was being assailed on account of his relationship to the deceased." Accused-appellant points out that Danilo Anino's name does not appear in the list of witnesses for the prosecution in both the original and amended informations.

This argument lack merit. Relationship per se does not automatically discredit a witness. In fact, kinship by blood or marriage to the victim would deter one from implicating innocent persons as one's natural interest would be to secure conviction of the real culprit.[34] On the other hand, the mere fact that Anino was not listed as a prosecution witness in the information does not necessarily make him an "eleventh hour witness." For one, the list is not exclusive since it states ". . . and others" were to be presented. Secondly, the prosecution has the prerogative to call witnesses other than those named in the complaint or information as, in any case, the defense still has the opportunity to cross-examine the said witnesses.[35]

Anent accused-appellant's charge that Anino was a fabricated witness to buttress the testimony of Richard Pabate, accused-appellant himself refutes his own argument by pointing out that Anino is related by affinity to the victim. He is in fact the brother-in-law of Richard Pabate, his wife being the elder sister of Richard. What cannot be denied is that the testimonies of Richard Pabate and Danilo Anino are consistent with the nature of the stab wounds sustained by the victim.

Third. Considering the guilt of accused-appellant, the question is whether he can be held liable under the information because the same alleges that the killing was committed by "hunting knives" when what is established is that accused-appellant stabbed the victim with an ice pick or similar weapon, while it was the other accused, Eduardo Candare, who used the hunting knife. We hold that the variance is inconsequential. It does not really matter whether it was only a hunting knife or an ice pick which was used to kill the victim. There is conspiracy in this case so that the act of one is the act of all. The existence of conspiracy, which is alleged in the information, can be inferred from the successive stabbing of the victim by both of the accused.[36]

Fourth. Going now to the circumstances attending the commission of the crime, the Court agrees with the trial court that the qualifying circumstance of treachery is present in this case. There is treachery though the stab wounds were inflicted frontally because the suddenness of the attack left the victim without anything to defend himself.[37] Abuse of superior strength is absorbed in treachery, so that there is no need to appreciate it separately as an independent aggravating circumstance.[38]

The qualifying circumstance of treachery being present, accused-appellant was properly convicted of murder which carries the penalty of reclusion perpetua to death. Since there are no mitigating or aggravating circumstances, the penalty to be imposed is reclusion perpetua pursuant to Art. 63(2) of the Revised Penal Code.

Fifth. Anent accused-appellant's civil liability, the award of the P30,165.00 actual damages for the expenses incurred as a result of the death of the victim should be deleted as there were no receipts presented evidencing the same. However, as the heirs of the victim clearly incurred funeral expenses, P10,000.00 by way of nominal damages should be awarded.[39] This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification.

In addition, moral damages in the amount of P50,000.00 should also be granted to the heirs of the victim. This award is mandatory and does not require proof other than the death of the victim.[40] These awards are in addition to the award of indemnity in the amount of P50,000.00 made by the trial court.

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION that the award of P30,165.00 as actual damages in funeral expenses is DELETED and that accused-appellant is ordered to pay to the heirs of the victim moral damages in the amount of P50,000.00 and nominal damages in the amount of P10,000.00 in addition to the P50,000.00 death indemnity and the costs.

SO ORDERED.

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

[1] Per Judge Cesar L. Conol.

[2] Records, p. 23. The information was amended to include Eduardo Candare as among the accused.

[3] Eduardo Candare, however, has recently been arrested, and in an affidavit, dated August 23, 1999, admitted sole responsibility for the killing. (Supplement to Brief of Accused Appellant, Annex A, Temporary Rollo)

[4] Records, p. 27.

[5] Unlike a permanent market, a tabo-an is set up at a certain locality only on a particular day in the week.

[6] TSN (SPO4 Benie Toledo), pp. 4-10, Nov. 12, 1996.

[7] TSN, pp. 2-20, Dec. 3, 1996.

[8] Records, p. 60.

[9] TSN, pp. 2-10, Dec. 17, 1996.

[10] Id., p. 7.

[11] Id, p. 61.

[12] TSN, pp. 2-12, Nov. 7, 1996.

[13] TSN, pp. 2-20, Jan. 22, 1997.

[14] Also spelled as "Cristituto" in various parts of the Records.

[15] TSN (Cristito Clavate), pp. 2-20, Jan. 7, 1997; TSN (Mary Villanueva) pp. 21-33, Jan. 7, 1997; TSN (Regina Lagane), pp. 2-14, Jan. 10, 1997; TSN (Petronilo Floreza), pp. 2-19, Jan. 21, 1997.

[16] RTC Decision, pp. 6-7; Rollo, pp. 21-22.

[17] Id., p. 7; id., p. 22.

[18] Appellant's Brief, p. 1; Id., p. 33.

[19] E.g, People v. Saley, 291 SCRA 715 (1998); People v. Villanueva 284 SCRA 501 (1998).

[20] Records, p. 7.

[21] TSN, pp. 5-7, Nov. 7, 1996. (Emphasis added)

[22] E.g., *People v. Bautista*, 308 SCRA 620 (1999).

[23] TSN (Oscar Carillo), p. 15, Jan. 22, 1997; TSN (Cristito Clavite), p. 12, Jan. 7, 1997.

[24] See *People v. Balderas*, 276 SCRA 470 (1997) where it was held that a cane knife, having a maximum width of five inches, cannot cause a fatal wound which is only one centimeter in length.

[25] See *People v. Roche*, G.R. No. 115182, April 6, 2000, where it was held that an ice pick cannot create a surface wound more than one inch wide.

[26] *Jose v. Manila Central Bus Lines*, G.R. No. 118441-42, Jan. 18, 2000.

[27] *Supra* note 3.

[28] TSN, pp. 6, 13, Jan. 10, 1997.

[29] TSN, p. 28, Jan. 7, 1997.

[30] *Id.*, pp. 29-30.

[31] TSN, pp. 8-10, Jan. 21, 1997.

[32] TSN (Cristito Clavate), pp. 8-9, Jan. 7, 1997; TSN (Mary Villanueva), pp. 23-30, Jan. 7, 1997; TSN (Regina Lagane), pp. 8-9, Jan. 10, 1997.

[33] E.g., *People v. Naag*, G.R. No. 123860, Jan. 20, 2000.

[34] *People v. Macuha*, G.R. No. 110085, July 6, 1999.

[35] *People v. Beltran*, 260 SCRA 141 (1996); *People v. Pacabes*, 137 SCRA 158 (1985).

[36] *People v. Derilo*, 271 SCRA 633 (1997).

[37] E.g., *People v. Atrejenio*, G.R. No. 120160, July 13, 1999.

[38] E.g., *People v. Alib*, G.R. No. 130944, Jan. 18, 2000; *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999).

[39] *Sumalpong v. Court of Appeals*, 268 SCRA 764 (1997)

[40] E.g., *People v. Robles*, 305 SCRA 273 (1999).

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