

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY GADO, ACCUSED-APPELLANT.

G.R. No. 129556. November 11, 1998

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Rey Gado seeks reversal of the judgment of conviction rendered by Branch 276 of the Regional Trial Court of the National Capital Judicial Region stationed in Muntinlupa City.

The Information dated July 14, 1992 charging accused-appellant and his co-accused Emma Gallos with Murder pertinently alleged:

That on or about the 30th day of January, 1992, in the Municipality of Muntinlupa, Metro Manila, Philippines, and within and jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, with intent to kill, with treachery, while armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously stab Melencio M. Manalang, Jr. in his abdomen as a result of which said victim sustained a serious body injury which caused his death, to the damage and prejudice of his heirs in such amount as may be proven at the trial.

(p. 1, Record.)

During trial, the prosecution adduced the inculpatory facts through Fernando Reyes, Melencio Manalang, Sr. (the victim's father), and Dr. Alberto M. Reyes, then Acting Chief of the NBI Medico -Legal Division, which may be summarized as follows:

On the evening of January 30, 1992, the victim and some of his friends were having a drinking session at the house of Juanito Vicente. Shortly thereafter, the victim decided to leave and accused-appellant Rey Gado and Juanito Vicente decided to bring him home. With them were a certain Emma and her brother whose name the victim failed to mention. On their way, and while they were along Fleur De Liz Street, the victim was held by his companions and he was stabbed in the abdomen by Rey Gado. As the victim freed himself from his assailants, the latter fled. He immediately grabbed a stone and hurled it at them.

While he was proceeding home, he was chanced upon by barangay tanod Fernando Reyes who offered to help him home. At about 9 o'clock that evening, he reached their house. He immediately slumped on the floor and asked his father to bring him to the hospital. Upon his father's query, the victim identified Rey Gado as his assailant.

While aboard a jeep on their way to Perpetual Help Hospital at Las Piñas, Metro Manila, the victim once more related what happened to him, identifying the other companion of Rey Gado. He was given medical attention at Perpetual Help Hospital but about four hours thereafter, at around 2 o'clock early morning of January 31, 1992, he succumbed.

On September 15, 1992, an Information charging Rey Gado and Emma Gallos was filed in court. An order for the

arrest of the accused was accordingly issued on September 17, 1992, but the same was left unserved. The trial court ordered the case to be archived on February 22, 1993. It was not until May 30, 1994 when Rey Gado, one of the two accused, was served an alias writ of arrest by the PNP Criminal Service Command of the Cavite Provincial Office while detained at Camp Vicente Lim, Calamba, Laguna due to a charge of Robbery/ Hold Up before the Municipal Trial Court of Carmona Cavite (p. 11, Record).

On November 21, 1994, both accused-appellant Rey Gado, and his co-accused Emma Gallos, who voluntarily appeared in court upon notice, were arraigned and both entered a plea of not guilty. Emma Gallos was then also ordered to be detained.

The two accused, on their part, sought refuge in their defense of alibi. Rey Gado claimed to have been tending the store of his brother at Sucat, Cupang, Muntinlupa, about five kilometers away from the place where the incident happened, while Emma Gallos averred that she was at home tending to her sick daughter.

The trial court rendered judgment acquitting Emma Gallos. Rey Gado was, however, convicted of the crime of murder and sentenced to suffer "the penalty of reclusion perpetua . . . and [to] indemnify the heirs of his victim the sum of P50,00.00 and to pay P50,000.00 as reimbursement for the medical and burial expenses . . ." Hence, the present appeal anchored on the following assigned errors:

I

THE LOWER COURT ERRED IN CONSIDERING THE AFFIDAVIT OF WITNESS FERNANDO REYES.

II

THE LOWER COURT ERRED IN CONSIDERING MELENCIO MANALANG'S TESTIMONY AS A DYING DECLARATION.

III

THE LOWER COURT ERRED IN NOT LENDING CREDENCE TO ACCUSED-APPELLANT'S ALIBI.

IV

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT.

After carefully going over accused-appellant's arguments as well as the evidentiary record, we find his appeal wanting in merit.

On the issue of witness Fernando Reyes's retraction, the trial court, in its order denying the motion for reconsideration of accused-appellant, explained thus:

After carefully evaluating the grounds relied upon in the MOTION FOR RECONSIDERATION AND/OR NEW TRIAL, this Court holds that the conviction of accused Rey Gado is not only based on the affidavit of the eye witness which admittedly was recanted by the affiant, but also on the declaration of the victim who told his father Melencio Manalang, Sr. that he was stabbed by accused; at a time when this victim Melencio Manalang, Jr. felt he was weakening, and therefore conscious of an impending death"

(p. 282, Record)

We find no further reason to entertain the argument of accused-appellant on this matter. We shall instead look into whether or not sufficient evidence remains to sustain the conviction of accused-appellant for the crime charged.

Accused-appellant vigorously takes exception to the trial court's admission of the testimony of Melencio Manalang, Sr., who testified in regard to the statements and declarations of his son concerning his assailants, claiming that the said declaration are not in the nature of a dying declaration for the simple reason that they were

not made under a clear consciousness of an impending death.

We are not persuaded.

Forthwith, we must stress that with regard to the credibility of Melencio Manalang, Sr. as witness, we find no reason to disturb the trial court's finding. The settled and time-tested jurisprudence is that the findings and conclusions of the trial court on the credibility of witnesses enjoy the respect of appellate courts for the reason that trial courts have the advantage of observing the demeanor of witnesses as they testify (*People vs. Cabiles*, G.R. No. 112035, January 16, 1998; *People vs. Moran*, 241 SCRA 709 [1995]; *People vs. Gamiao*, 240 SCRA 254 [1995]). In the absence of any arbitrariness in the trial court's findings and evaluation of evidence which tends to show that it overlooked certain material facts and circumstances, such findings and evaluation of evidence should be respected on review (*People vs. Dio*, 226 SCRA 176 [1993]). The presiding judge of the trial court had the opportunity to actually observe the conduct and demeanor of the witnesses on the witness stand while being asked direct-examination questions by the prosecution, cross-examination questions by the defense, as well as clarificatory questions by the trial judge himself. Between the trial judge and this Court, the former is in a far better position to determine whether a witness is telling the truth or not. From the records before us we find no reason to disturb the trial court's assessment and to discredit Melencio Manalang, Sr. as a witness.

The central issue to be resolved is whether the statements, uttered by the victim before he died partake of the nature of a dying declaration or not.

The Court finds in the affirmative.

Through the dying declarations of the victim as related by his father, Melencio Manalang, Sr. before Atty. Pepito Tan at the National Bureau of Investigation, National Capital Region (Taft Avenue, Manila), the identity of the killer was established in this case, to wit:

07. T: Maari bang isalaysay mo ang buong pangyayari ayon sa pagkakakuwento sa iyo ng biktima na si MELECIO MANALANG, JR?

S: Ayon po sa aking anak, nag-inuman silang magbabarkada sa bahay ni JUANITO VICENTE at nang siya ay malasing na inihatid siya ni REY GADO at JUANITO VICENTE na may kasamang isang babae nagngangalang EMMA at isang lalaki na hindi ko alam ang pangalan na kapatid ni EMMA. Noong nasa daan na sila ng Fleur de Luz St. sa ilalim ng puno ng aratiles ay doon na raw siya sinaksak ni REY GADO sa may tiyan. Noong nakabitaw na si MELECIO MANALANG, JR. ay nakadampot pa siya ng bato at pinukol ang grupo nina REY GADO na nakanya-kanya na ng takbo. Noong pauwi na siya ay nasalubong daw niya si FERNANDO REYES, isang Barangay Tanod na siyang naghatid sa kanya sa bahay. Pagdating sa bahay ay inihatid na namin siya sa hospital ng Perpetual Help Medical Center, Las Piñas, Metro Mla. na kung saan siya ay nalagutan ng hininga ng bandang alas-dos ng madaling araw ng January 31, 1992.

(p. 1, Exhibit E)

The witness reiterated the material points of this sworn statement during his testimony before the trial court. He also established the basis for the admissibility of the dying declaration, as an exception to the hearsay rule, to wit:

COPY

Q

You said that the victim when he arrived at your house he was holding his wounds?

A

Yes, your honor.

Q

Immediately when he arrived at your house, what did he do?

A

He sat down, your honor.

Q

He sat down, where?

A

He sat down on the floor, your honor.

Q

And, you talked at him?

A

Yes, your honor.

Q

And, he was just sitting on the floor, and was he was holding his wounds?

A

Yes, your honor.

Q

And, did you see any blood coming from his wounds?

A

Yes, your honor.

Q

Now, did you ask him how he felt?

A

He told me to bring him to the hospital, your honor.

Q

Did he tell you why he should be taken to the hospital?

A

Because he is getting weak, your honor.

Q

Now, did you ask him why he was getting weak?

A

He told me that he was stabbed by Rey Gado, your honor.

Q

And, so he asked you to bring him to the hospital because he was getting weak?

A

Yes, your honor.

Q

He told you that he was only feeling weak. Did you tell him or did you ask him if he did something or if he wants to eat or anything?

A

I did not say anything, your honor.

Q

Did he say, he did something?

A

No, your honor.

Q

He just told you to bring him to hospital because he was getting weak?

A

Yes, your honor.

Q

Now, did you ask him where he was stabbed?

A

Yes, your honor, he said that he was stabbed in the stomach, your honor.

(pp. 17-20, tsn, April 10, 1995)

As a rule, a dying declaration is hearsay and is inadmissible as evidence. In order that a dying declaration may be admissible as evidence, four requisites must concur, namely: that the declaration must concern the cause and surrounding circumstances of the declarant's death; that at the time the declaration was made, the declarant was under a consciousness of an impending death; that the declarant is competent as a witness; and that the declaration is offered in a criminal case for homicide, murder or parricide, in which the declarant is a victim (*People vs. Israel*, 231 SCRA 155 [1994]; *People vs. Lazarte*, 200 SCRA 361 [1991]).

Capitalizing on the fact that the victim was still able to stand and walk even after the first declaration was made, accused-appellant contends that there could not have possibly been a belief of a looming and impending death on the part of the victim.

We cannot quite agree. From the established facts in the case at bar, the trial court correctly considered the declaration of the victim a dying declaration and, therefore, admissible. The declarant was conscious of his

impending death. This may be gleaned not only from the victim's insistence right after he reached their house that he should immediately be brought to the hospital and that he was becoming weaker by the moment, but also from the serious nature of his wounds (*People vs. Sarabia*, 127 SCRA 100 [1984] and the fact that the victim died shortly afterwards (*People vs. Araya*, 105 SCRA 133 [1981]).

Even assuming that the victim's utterances were not made under a firm belief of an impending death, the victim's statements may, at the very least, form part of the *res gestae*. For the admission of evidence as part of the *res gestae*, it is required that (a) the principal act, the *res gestae*, be a startling occurrence, (b) the statements forming part thereof were made before the declarant had the opportunity to contrive, and (c) the statements refer to the occurrence in question and its attending circumstances (*People vs. Siscar*, 140 SCRA 316 ([1985])). We have ruled that while the statement of the victim may not qualify as a dying declaration because it was not made under the consciousness of impending death (*People vs. Palamos*, 49 Phil 601 [1926]), it may still be inadmissible as part of the *res gestae* if it was made immediately after the incident (*People vs. Reyes*, 52 Phil. 538 [1928]), or a few hours thereafter (*People vs. Tumulip*, 60 SCRA 303 [1974]). Definitely, the victim's statement in the case at hand was made immediately after the incident, before he could even have the opportunity to contrive or concoct a story. Of relevance, too, is the fact that on two occasions, first at their house, and later while he was being brought to the hospital, he identified one and the same person as his assailant.

Where the elements of both a dying declaration and a statement as a part of the *res gestae* are present, as in the case at bar, the statement may be admitted as a dying declaration and at the same time as part of the *res gestae* (*People vs. Balbas*, 122 SCRA 859 [1983]).

From a perusal of the decision of the trial court, one gets the impression that the supposed eyewitness account was heavily relied upon. Thus, on motion for reconsideration, accused-appellant pointed to the inevitable fact that because of retraction by the supposed eyewitness of the sworn statements executed by him before the investigating officer, full credence thereto may no longer be accorded. The trial court justified the conviction anyway, upon the strength of the dying declaration as related by Melencio Manalang, Sr.

The Court has re-assessed the evidence of the prosecution minus the supposed eyewitness account to determine whether it would be correct to convict accused-appellant of murder, and not simple homicide. This Court finds ample basis to uphold the conviction of accused-appellant for the killing of Melencio Manalang, Jr. qualified by treachery, as alleged in the Information.

While the victim was being brought to the Perpetual Help Hospital at Las Piñas, Metro Manila boarded on a jeep hired for the purpose, the victim related the following to his father.

FISCAL DE JOYA

Q

What was your conversation, between you and your son?

A

He told that he was stabbed by Rey Gado under the tree of alatiros, ma'am.

Q

And what else did your son tell you?

A

He was able to free himself from the person who was holding him, he got a stone and he cast stone to the person who stabbed him, ma'am.

Q

You said that your son told you that one Rey Gado stabbed him?

A

Yes, ma'am.

Q

What else did your son tell you about the said stabbing incident?

A

Besides the is being stabbed, he told me that this Rey Gado has companions in the name of Emma Gallos, Juanito Vicente and a certain person who is a tall guy and one John Doe, ma'am.

(pp. 9-10 tsn, April 10, 1995)

It seems fairly established, therefor, that more than one person attacked the victim. While he was being stabbed by accused-appellant, some of the companions of accused-appellant were holding the victim in a defenseless position. The manner in which the stabbing was done tended directly and specially to ensure its execution, affording the victim no chance to put up any defense. The constitutes alevosia. The killing, therefore, was qualified to murder. It is to be noted also that accused appellant and his companions were supposed to assist the victim home. However, instead of bringing him safely home, accused-appellant and his companions ganged up on the victim, who had no inkling of any impending attack, having placed himself in the safekeeping of persons who then turned vicious assailants.

The defense of alibi presents itself to be very weak vis-à-vis the evidence adduced by the prosecution pointing to accused-appellant as the perpetrator of the crime. Besides, as correctly pointed out by the Solicitor General in the People's Brief,

For alibi to prosper, it would not be enough for the accused to prove that he has been elsewhere when the crime was committed but he must further demonstrate that it would have been physically impossible for him to be at the scene of the crime at the time of its commission. (People vs. Esquilona, 248 SCRA 139 [1995]).

(pp. 8-9, Appellee's Brief.)

Under Article 248 of the Revised Penal Code, as amended, Murder is punishable by reclusion perpetua to death, both indivisible penalties. There being neither mitigating nor aggravating circumstances, the trial court correctly sentenced accused-appellant to the lower penalty of reclusion perpetua.

The trial court likewise correctly awarded civil indemnity in the amount of P50,000.00. However, we do not see how the award of actual damages in the same amount may be justified in the light of the evidence tending to show that only the total amount of P23,217.65 was actually spent (see Exhibit F-II, p. 9 Folder of Exhibits). It is elementary that actual and compensatory damages, unlike moral and exemplary damages, cannot be left to the sole discretion of the court. In *del Mundo vs. Court of Appeals*, 240 SCRA 3348 [1995] were stressed that:

A party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proved. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. We must emphasize that these damages cannot be presumed, and courts, in making an award must point out specific facts which could afford a basis for measuring whatever

compensatory or actual damages are borne.

(p. 356)

The award of actual and compensatory damages in the case at bar must, therefore, be reduced to the amount duly proved at the trial which is to P23,217.65.

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED** with the **MODIFICATION** as to actual damages as hereinabove indicated. No special pronouncement is made as to costs.

SO ORDERED

Puno and Mendoza, JJ., concur.

Martinez, J., no part, on official leave.

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