

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO TABONES @ “YAPE,” MARIO CAILLO AND SAMUEL SERONA, ACCUSED. EDUARDO TABONES @ “YAPE,” APPELLANT.

G.R. No. 129695. March 17, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Evident premeditation and treachery must be established as conclusively as the killing itself. In the absence of clear and convincing evidence, they cannot be used to qualify a killing to murder.

The Case

Eduardo Tabones appeals the August 26, 1996 Decision[1] of the Regional Trial Court of Tacloban City, Branch 9, in Criminal Case No. 94-05-286, finding him guilty of murder beyond reasonable doubt.

Prosecutor II Roland N. Homers filed on April 12, 1995, an Amended Information charging with murder Appellant Eduardo Tabones alias "Yape," together with two other accused, Samuel Serona and Mario Caillo, who were earlier referred to in the original Information as "Samuel Doe" and "Mario Doe." The Amended Information reads:

"The undersigned City Prosecutor of the City of Tacloban accuses EDUARDO TABONES @ 'Y[a]pe', MARIO CAILLO and SAMUEL SERONA of the crime of Murder, committed as follows:

"That on or about the 15[th] day of May, 1994, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with deliberate intent to kill and with treachery and evident premeditation, armed with a deadly weapon did, then and there wilfully, unlawfully and feloniously attack and wound MARLON LIM on his chest, thereby inflicting stab wounds which caused the death of MARLON LIM."[2]

Upon his arraignment on July 26, 1994, Appellant Tabones, duly assisted by Counsel de Oficio Cristina Cesar, pleaded not guilty.[3] Serona and Caillo, on the other hand, remained at large. Thus, trial proceeded in due course only against Eduardo Tabones. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the judgment is hereby rendered finding accused Eduardo Tabones guilty beyond reasonable doubt of the crime of murder, but appreciating in his favor the mitigating circumstance of voluntary surrender, the court hereby imposes upon said accused Eduardo Tabones the penalty of reclusion perpetua and to pay the heirs of Marlon Lim the amount of P50,000.00 by way of idemnification and to pay the cost of the suit."[4]

Hence, this appeal direct to this Court.[5]

The Facts

Evidence for the Prosecution

In the Appellee's Brief, the Office of the Solicitor General[6] presented the following narration of facts:

"In the early morning of May 15, 1994, the victim Marlon Lim and Arnold Legones[7] were on their way to their respective residence[s] at Barangay 96, Calanipawan, Tacloban City after watching a dance. (pp. 2-3, transcript of stenographic notes (tsn), November 15, 1994)

"Along the way, the victim and Legones were accosted by appellant Eduardo Tabones and his companions Samuel Serona and Mario Caillo. Appellant immediately boxed the victim on his chest [and the latter] fell on the ground. (p.5, tsn, ibid) Thereupon, Serona held the victim's left hand while Caillo held the right hand. While the victim lay prostrate with his arms held by Serona and Caillo, appellant stabbed him with a bladed weapon (a pisao) on the left side of the chest.(pp. 5-6, tsn, ibid)

"After appellant stabbed the victim, the latter was able to free himself from the hold of Serona and Caillo and ran away. (p. 7, tsn, ibid)

"The victim was brought and was admitted at the Bethany Hospital where he died five (5) hours after being admitted. (p. 8, tsn, ibid)

"Dr. Leoncio Amparado, the victim's attending physician, executed a Medico Legal Report (Exh. "A") where he described the fatal wound as follows:

'Stab wound 1.3 cm. long, longitudinal, (L) lateral chest, level of 7[th] ICS, along MAL, directed postero[medially] and inferiorly, penetrating (L) hemothorax with massive pneumothorax, lacerating (L) hemidiaphragm, penetrating abdominal cavity, perforating body of stomach, anterior portion, thru and thru lacerating gastrocolic omentum, with massive hemipertoneum.'

"The wound caused massive bleeding which resulted in the death of the victim.(p. 3, tsn, September 29, 1994)"[8]

Evidence for the Defense

In the Appellant's Brief,[9] the defense invokes alibi and summarizes the testimonies of its four witnesses as follows:

"EDUARDO TABONES, the accused-appellant, testified that at around 10:00 o'clock in the evening of May 14, 1994, he was in the company of his mother, Violet[a] Tabones and co-fish vendor Marina Abrematea at the shedhouse [sic] located at Old Road, Sagcahan, Tacloban City to buy fish to be sold later at the V and G flea market. After buying one foam container of burao fish worth P1,150.00, he[,] together with his mother and Marina Abrematea who was able to buy the same volume and amount of fish, loaded the same on a hired tricycle and brought it to the V and G flea market where they subsequently placed ice on it before closing and leaving the same for disposal early next morning. They simultaneously left the flea market and together with his mother, they went home at around 11:00 o'clock. While they were on their way back home, they met two (2) persons by the name of Samuel Serona and Mario Caillo who were running away from the interior of the barangay. They later learned when they passed by the scene of the incident that someone was stabbed xxx after which his mother told him to return to the flea market to spend the night thereat. He was apprehended by the police the following morning as a suspect in the stabbing of the victim and was immediately locked and confined at the Tacloban City jail. (TSN, October 26, 1995, pp. 2-7)

"VIOLETA TABONES, mother of the accused-appellant corroborated the testimony of her son [o]n several material aspect[s] and [her] testimony was substantially the same as that of the accused-appellant. (TSN, October 27, 1995, pp. 2-6)

"ALITA DUERO, testified that at around 10:00 o'clock in the evening of May 14, 1994, she was at the house of Mana Lita (Violeta Tabones) attending the vespers of the fiesta. A daughter of Mana Lita served food [to] her and told her later that both Mana Lita and Yape Tabones (Eduardo) were out to buy fish. At around 12:00

o'clock midnight, she asked permission to leave and when she was about five (5) to six (6) meters away from the house of Mana Lita, she saw a person [stab] someone. Being a stranger in the place, she mingled with the crowd and she later learned that the victim was a certain Marlon Lim and the assailant was Samuel Serono. After a while, she saw Mana Lita together with Yape Tabones among those persons crowding at the scene of the incident. Afterwards[,] she was led to a certain point back home by Mana Lita while Yape Tabones was told to go home ahead. (TSN, December 8, 1995, pp. 3-7)

"MARINA ABREMATEA, testified that at the time of the incident, accused-appellant was with them at the shedhouse [sic] at Sagcahan, Tacloban City buying fish to be sold later at the V and G [f]lea market. After buying two(2) boxes of burao fish, they boarded a tricycle bound for the V and G flea market. After putting ice on the fish at about midnight, they all went home together. She was surprised to learn the following morning that Eduardo Tabones was already in jail for being a suspect in the stabbing of Marlon Lim. (TSN, January 10, 1996, pp. 2-5)"[10]

Ruling of the Trial Court

Relying on the testimonies of Arnold Legones and Antonio Cerida who both identified appellant and two other persons as responsible for the death of Marlon Lim, the trial court convicted the accused. It rejected the defense of alibi, because appellant failed to prove the impossibility of his presence at the scene of the crime at the time it was committed.

In convicting appellant of murder, the court a quo did not specify the attendant qualifying circumstances. However, it appreciated the mitigating circumstance of voluntary surrender.

Assignment of Errors

Assailing the trial court's Decision, appellant interposes the following as errors:

"I

The trial court erred in giving due weight and credence to the alleged eyewitness account of Arnold Legones despite the inherent uncertainties of accused-appellant's participation in the incident.

"II

The trial court erred in ignoring the defense evidence despite the corroborated testimonies of witnesses supporting the same.

"III

The trial court erred in relying on the alleged weakness of the defense evidence in convicting the accused-appellant of the crime charged rather than on the strength of prosecution evidence.

"IV

The trial court erred in convicting the accused-appellant of the crime of murder despite the absence of any qualifying circumstance to support the same."[11]

The Court's Ruling

The appeal is partly meritorious. Appellant should be convicted only of homicide, not murder.

First Issue:

Identification of Appellant

Because Arnold Legones was unsure of the participation of appellant in the killing, the latter argues that the trial court erred in giving full weight and credence to the former's testimony. Said witness allegedly contradicted his assertion on direct examination that appellant was the malefactor when, during cross-examination, he admitted stating at the police station that he was not sure who had really stabbed the victim. Appellant further contends that

Legones merely pointed to him, because the other accused were still at large. He adds that one of the two could have perpetrated the killing.

Appellant's arguments are unconvincing. The abovementioned statement of Legones was not even a part of his affidavit, in which he categorically declared that it was Tabones who stabbed Lim, viz.:

"2. That EDUARDO TABONES, alias Yape, punched Marlon Lim in the chest, pinning the same down. SAMUEL DOE and MARIO followed, holding the arms of Marlon Lim, unable to defend himself. At this instance, Eduardo Tabones whipped [out] a bladed weapon then stabbed Marlon Lim once in the chest." [12]

Legones repeated this statement when he testified on how he and Lim, on their way home from a dance, were accosted by Tabones, Serona and Caillo. Thereafter, Tabones boxed Lim; as the latter fell, Serona and Caillo grabbed each of his arms and held him. Then Tabones drew a knife and stabbed Lim on the chest. Legones testified:

"Q: Where were you heading after you came from the dance?

A: We were on our way home.

Q: On your way home what happened?

A: We were suddenly accosted by them.

Q: Who were they?

A: Yape Tabones, Mario Caillo and Samuel Serona.

Q: Who was accosted?

A: The two of us.

Q: What did they do in trying to accost you?

A: Marlon Lim was immediately boxed.

Q: Who boxed Marlon?

A: Yape Tabones.

Q: Where was Marlon hit when he was boxed by Yape Tabones?

A: On his chest.

Q: What happened to him when he was hit on his chest?

A: He fell.

Q: During this time that Yape Tabones boxed Marlon Lim and he fell to the ground, what were Mario Caillo and Samuel Serona doing?

A: The two immediately approached Marlon and held him in both arms.

Q: When did the two, Mario Caillo and Samuel Serona, h[o]ld the arms of Marlon Lim; while still standing or when he already fell to the ground?

A: When he fell.

Q: Who was holding xxx the right hand of Marlon Lim?

A: Mario, Sir.

Q: Who was holding the left hand?

A: Samuel.

Q: When Marlon Lim was already prostrate on the ground being held by Samuel Serona on his left hand and Mario Caillo on his right hand, what did Yape Tabones do?

A: Yape drew his knife (locally known as pisao) and stabbed Marlon.

Q: What part of the body of Marlon was hit by the stabbing?

A: On the left side of his chest. (Witness indicated the left side of his chest just near the left breast.)"[13]

The trial judge, who had the opportunity to hear the testimony of the witness firsthand and to observe his manner and demeanor during trial, was convinced of his credibility and the truthfulness of his testimony. Time and again, this Court has ruled that "the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted." [14] Appellant has shown no reason why we should depart from this well-settled doctrine, and indeed we find none.

Second Issue:

Alibi

Appellant interposes the defense of alibi, claiming that he was at a "shed house" in Sagcahan when the crime was committed. Other defense witnesses corroborated this claim.

To prove alibi, the defense must show that it was physically impossible for appellant to have been present at the place of the crime at the time. [15] In the present case, appellant allegedly bought fish which he iced at a "shed house" in Sagcahan, Tacloban City, on May 15, 1994, from 10:00 p.m. to midnight before he went home. However, the "shed house" was only less than two kilometers from the locus criminis, and he could have easily traversed the distance. Moreover, from Legones' testimony, the victim was still at the dance at midnight:

"Q: At this date and time of about 12:00 in the early morning of May 15, 1994[,] do you know where Marlon Lim was?

A: Yes, sir.

Q: Where?

A: He was at the dance." [16]

Thus, even if appellant had bought and iced fish from 10:00 p.m. to midnight, of the same day, his defense of alibi must fail. The facts of this case clearly show that when the victim went home from the dance after midnight, appellant was no longer at the "shed house."

Third Issue:

Adequacy of Prosecution Evidence

Appellant also maintains that the trial court relied more on the weakness of the defense rather than on the strength of the prosecution's evidence. We are not convinced. While the trial court may not have thoroughly explained the reason for the conviction of the appellant, an examination of the evidence adduced leads to a conclusion beyond

reasonable doubt that he was indeed responsible for Lim's death. The case of the prosecution was sufficiently established by the corroborated testimonies of its witnesses who were found to be both truthful and credible. Specifically, Witness Legones, unmotivated by ill will or evil intent, gave a detailed account of how appellant had stabbed the victim and thus caused his death. He testified categorically, clearly and without any guile.

Fourth Issue:

Qualifying Circumstances

Finally, appellant argues that evident premeditation and treachery, the two qualifying circumstances alleged in the information, were not sufficiently established. We agree.

It is settled that qualifying circumstances cannot be presumed, but must be established by clear and convincing evidence, as conclusively as the killing itself.[17] To establish evident premeditation, it must be shown that there was a period sufficient to afford full opportunity for meditation and reflection, a time adequate to allow the conscience to overcome the resolution of the will, as well as outward acts showing the intent to kill.[18] In the instant case, the testimonies of the prosecution's witnesses do not even hint that appellant had resolved to commit the crime prior to its execution. No proof of any preconceived plan or predetermination to kill was presented. Thus, evident premeditation cannot be appreciated.

Neither was treachery present, since it was not shown that the accused "employed means, methods or forms in the execution [of the crime] which tend directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might make." [19] Indeed, "the essence of treachery is the swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim" [20]; this was not proven in this case. The victim was openly attacked; he was not struck from behind or assaulted without warning. In fact, he was first accosted, boxed and held by the other two accused, before he was stabbed. Clearly, before he was held down on both arms, he had an opportunity to defend himself, retaliate, or even flee.

The Crime

Therefore, under Article 249[21] of the Revised Penal Code, the crime attributable to appellant's felonious act is merely homicide and not murder, since the killing was not attended by any of the qualifying circumstances listed in Article 248[22] of the same Code.

As earlier stated, the trial court appreciated the mitigating circumstance of voluntary surrender. We disagree. In several cases, the Court has held that voluntary surrender requires these requisites: (1) the offender was not actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[23] The trial court, however, failed to state the factual basis of its finding. In fact, the records clearly show that the police arrested appellant; he did not surrender.

The trial court also ordered appellant to pay the sum of fifty thousand pesos (P50,000) to the heirs of Lim as indemnity ex delicto. Consistent with prevailing jurisprudence,[24] we affirm the award.

WHEREFORE, the assailed Decision is hereby MODIFIED. Appellant Eduardo Tabones is found guilty beyond reasonable doubt of HOMICIDE and is sentenced to an indeterminate penalty of ten (10) years of prision mayor as minimum to seventeen (17) years and 4 months of reclusion temporal, as maximum. Appellant is likewise ordered to pay the sum of fifty thousand pesos (P50,000) to the heirs of Marlon Lim as indemnity ex delicto.

SO ORDERED.

Romero, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

- [1] Written by Judge Walerico B. Butalid.
- [2] Amended Information; records, p. 41.
- [3] Certificate of Arraignment, records, p. 14.
- [4] Assailed Decision, p. 5; Rollo, p. 20.
- [5] The case was deemed submitted for resolution on January 13, 1999, when the Appellee's Brief was filed with this Court. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.
- [6] The Appellee's Brief was signed by Assistant Solicitor General Fernanda Lampas Peralta and Solicitor David Isidoro B. Ocampo.
- [7] Sometimes spelled "Ligones."
- [8] Appellee's Brief, pp. 3-5; Rollo, pp. 90-92.
- [9] The Appellant's Brief filed by the Public Attorney's Office was signed by Araceli A. Rubin, Bartolome P. Reus and Rogel F. Quijano.
- [10] Appellant's Brief, pp. 5-7; Rollo, pp. 48-50.
- [11] Appellant's Brief, pp. 1-2; Rollo, pp. 44-45.
- [12] Affidavit, p. 1; records, p. 4.
- [13] TSN, November 15, 1994, pp. 4-6.
- [14] *People v. Oliano*, GR No. 119013, March 6, 1998, per Panganiban, J. See also *People v. Gaurana*, GR Nos. 109138-39, April 27, 1998; *People v. Bersabe*, GR No. 122768, April 27, 1998; *People v. Castillo*, GR No. 120282, April 20, 1998; *People v. Siguin*, GR No. 126517, November 24, 1998; *People v. Sta. Ana*, GR Nos. 115657-59, June 26, 1998; and *People v. Bahatan*, 285 SCRA 282, January 28, 1998.
- [15] *People v. Canada*, 253 SCRA 277, 286, February 6, 1996; *People v. Tulop*, GR No. 124829, April 21, 1998; *People v. Pili*, GR No. 124739, April 15, 1998; *People v. Balmoria*, GR Nos. 120620-21, March 20, 1998; *People v. Cabebe*, GR No. 125910, May 21, 1998; *People v. Sabolones*, GR No. 123485, August 31, 1998.
- [16] TSN, November 15, 1994, pp. 2-3.
- [17] *People v. Garma*, 271 SCRA 517, April 18, 1997.
- [18] *People v. Renato Albao & Jose Oleno*, GR No. 117481, March 6, 1998; *People v. Castillo*, *supra*; *People v. Pallarco*, GR No. 119971, March 26, 1998; and *People v. Sumalpong*, 284 SCRA 464, January 20, 1998.
- [19] Article 14 (16) Revised Penal Code. See also *People v. Castillo*, *supra*; *People v. Pallarco*, GR No. 119971, March 26, 1998; *People v. Molina*, GR Nos. 115835-36, July 22, 1998; *People v. Sabalones*, GR No. 123485, August 31, 1998; *People v. Cawaling*, GR No. 117970, July 28, 1998.
- [20] *People v. Villamor*, 284 SCRA 184, January 16, 1998, per Panganiban, J. See also *People v. Andres*, GR No. 122735, September 25, 1998, and *People v. Navarro*, GR No. 129566, October 7, 1998.
- [21] Art. 249. Homicide. --- Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[22] Art. 248. Murder. --- Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means of persons to insure or afford impunity.
- In consideration of price, reward or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste or ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by RA No. 7659)

[23] *People v. Sumalpong*, 284 SCRA 464, January 20, 1998; *People v. Sion*, 277 SCRA 127, August 11, 1997; *People v. Rapanut*, 263 SCRA 515, October 24, 1996.

[24] *People v. Quitlong*, GR No. 121562, July 10, 1998; *People v. Lagarteja*, GR No. 127095, June 22, 1998; *People v. Marollano*, GR No. 105004, July 24, 1997; and *People v. Caballes*, GR No. 102723-24, June 19, 1997.

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