PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO TAN ALIAS “DING”, ACCUSED-APPELLANT.

G.R. No. 129882. September 14, 1999

Ponente: YNARES_SANTIAGO, J.

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YNARES_SANTIAGO, J.:

Accused-appellant Fernando Tan alias “Ding” and the victim Rey Buzon were childhood friends and neighbors at Don Manuel Street, La Loma, Quezon City. However, because of a certain woman named Zenaida Hermosisima, their long friendship ended on a sad and tragic note.

Zenaida Hermosisima, then the girlfriend of Fernando Tan, eloped with Rey Buzon. Zenaida and Rey eventually settled in the United States leaving behind Fernando with a grieving heart. Years passed and life went on for the trio. In time, Fernando himself got married and later became a widower.

Sixteen years later, in 1988, Rey returned to the Philippines. On the fateful day of April 25, 1988, he visited his relatives and friends at Don Manuel Street, La Loma, Quezon City. He had lunch with them and at about 1:00 o’clock in the afternoon, he prepared to leave to meet his accountant. Instead of meeting his accountant, he met his death.

Rey stepped out of the gate of their house accompanied by his half-sister Alicia Paras, Marcial Gavino, Wilit Marcaver and Francisco dela Rosa. Rey and Francisco seated themselves at the backseat of an owner-type jeep while Wilit Marcaver occupied the driver’s seat with Alicia Paras beside him. Marcial Gavino had yet to board, when Alicia saw appellant Fernando Tan approaching them. Alicia greeted him but instead of answering, Fernando pulled out a gun and pointed it at Rey saying, “Tarantado! Matigas talaga ang ulo mo, babarilin kita!” After uttering those words, Fernando shot Rey hitting him. Rey struggled to get out of the jeep and ran towards their house. Alicia followed but Fernando caught up with them. Alicia’s attempt to shield Rey so enraged Fernando that he pointed a gun at Alicia’s nose and shouted: “Putang ina mo, umalis ka diyan.” Scared, Alicia ran outside the gate. Fernando and Rey, meanwhile, wrestled with each other. At this juncture, Alicia heard his other brother, Castor Buzon, who was upstairs in their house, shout: “Huwag, Ding.”

When Rey was able to escape from the clutches of Fernando, he ran towards Halcon Street with Fernando closing in and at the same time shooting him. When Fernando caught up with Rey in Halcon Street, the latter, while in a kneeling position, implored: “What have I done to you, why are you doing this to me?” But Fernando remained deaf to his pleas. Instead, he hit Rey with his gun on the face and shot him. Rey died instantly.

Anita Lacanlalay, whose house was next to the Buzon’s, was then resting in her house when she saw the victim, accompanied by Alicia Paras, Marcial Gavino, Francisco dela Rosa and Wilit Marcaver step out of the gate and board the owner-type jeep parked in front of their house. Then, Lacanlalay saw Fernando Tan walking towards them and a short while later, he saw Fernando shoot Rey who was already seated inside the jeep. The victim then jumped out of the jeep and ran inside their house with Fernando in pursuit. After a while, Lacanlalay again saw the victim running towards the direction of Halcon Street with Fernando at his heels shooting him.

Cpl. Fortaleza, tasked to investigate the killing, interviewed John Buzon, Marcial Gavino, Francisco dela Rosa and Alicia Paras, who were one in pointing to the accused as the author of the crime. After interviewing Buzon, Gavino, dela Rosa and Paras, Fortaleza proceeded to Halcon Street and interviewed three (3) other persons who identified themselves only as neighbors of the victim. They informed Fortaleza that a certain "Willy Toma" shot the victim. However, when he invited them to go with him to the police station, they refused and immediately left.

On December 27, 1988, an Information was filed charging Fernando Tan alias Ding with murder, to wit:

> "That on or about the 25th day of April, 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill and without any justifiable cause, qualified with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one REY BUZON y MAÑALAC, by then and there shooting him with two (2) short handguns of unknown caliber hitting him on the different parts of his body thereby inflicting upon the said Rey Buzon serious and mortal injuries which were the direct and immediate cause of his death to the damage and prejudice of the HEIRS of the said Rey M. Buzon in such amount as may be awarded to them under the provisions of the Civil Code.[1]

At the arraignment, accused-appellant pleaded "not guilty" to the charge. Trial on the merits ensued. The prosecution presented Dr. Renato Bautista, the medico-legal officer; Mrs. Alicia G. Paras, half-sister of the victim; Mrs. Anita Lacanlalay, a relative by affinity of the victim; Reymualdo Buzon, son of the deceased; and Cpl. Rodrigo Fortaleza, the police investigator in-charge of the case.

On the other hand, the defense presented Cecilio To, Nenita Buenaventura, Marianito Gloria, who all claimed to be eyewitnesses; Aida Carrera, an employee of the Quezon City Registrar's Office; Dr. Jude Gonzales; Beatrice Tolentino; and Cpl. Rodrigo Fortaleza.

Fernando Tan denied commission of the crime. In his testimony, he narrated a totally different story. He claimed that in the evening of April 24, 1988, he witnessed an altercation and a fistfight between Rey Buzon and a certain Willie Fernandez alias "Willie Toma." Fernandez allegedly urinated in front of the gate of Buzon which irked the latter.

The next day, April 25, 1988 at about 1:00 o'clock in the afternoon, Willie Fernandez alias "Willie Toma" allegedly approached Buzon who was then seated inside an owner-type jeep parked in front of Buzon's house. Without any provocation coming from Buzon, Fernandez allegedly shot the former. Buzon jumped out of the vehicle and went inside the gate of their house with "Willie Toma" in hot pursuit. From their house, Buzon ran towards Halcon Street while "Willie Toma" continued chasing and shooting him. While the two (2) were already on Halcon Street, Fernando Tan allegedly tried to intervene and pacify the protagonists shouting "Tama na, tama na!". Nonetheless, he was not able to reach Buzon and "Willie Toma" as he was prevented by a certain Nene Buenaventura.

According to Fernando Tan, Willie Fernandez alias "Willie Toma" died sometime in September 1991.

After the trial, accused Fernando Tan was found guilty of murder and was sentenced to suffer the penalty of reclusion perpetua.

Accused-appellant is now before this Court assigning the following as errors:

First: He alleged that "the lower court erred in taking as gospel truth the testimonies of the alleged eyewitness Alicia Paras x x x inspite of the fact that her testimonies were heard by judges other than the one who penned the assailed amended decision."

This Court is not persuaded. While the rule that factual findings of the court below are generally not disturbed on

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appeal because the trial judge had the best opportunity to observe them and the manner by which they testify is concededly not applicable in the instant case considering that the judge who penned the decision was not the one who heard all the witnesses, nevertheless, after a careful review of the records of the case, this Court finds no reason to disturb the conclusions reached by the trial judge.

Alicia Paras categorically identified accused-appellant as the lone perpetrator of the crime. No earmark of inconsistency can be found in her narration. Granting that Paras was the half-sister of Buzon, this does not automatically mean that her testimony could not be relied upon. Mere relationship with any of the parties does not disqualify one from being a witness. Neither could one be branded as a biased witness because of one's relationship with a party to a case. In the instant case, the defense attacked the credibility of Paras because she is related to the victim. Paras was candid and straightforward in her testimony, categorical in her assertions. Being a relative of the victim, this Court is convinced that Paras only wanted to obtain justice for her fallen brother. In her quest for truth, this Court believes that she only wanted the real culprit and nobody else to suffer the consequences of his wrongful acts.

The defense belabored to point out an alleged inconsistency in the testimony of Paras particularly with regard to the address of the deceased. However, this matter is immaterial and irrelevant. It is so inconsequential that it failed to cast even a hint of doubt on the credibility of prosecution eyewitness Alicia Paras. All told, the defense utterly failed to dent the credibility of Paras.

Second: The defense faults the lower court for "not considering as fatal to the prosecution's case the absence of the names of the two (2) alleged eyewitnesses in the list of witnesses contained in the information."

The mere fact that the names of Paras and Lacanlalay were not listed in the information as among the witnesses for the prosecution does not mean that their testimonies could not be believed. Time and again, this Court has ruled that the prosecution has the power and privilege to determine who may be called as its witnesses. Besides, several years have passed before the trial of this case commenced. Many of the prosecution witnesses listed in the information could no longer be located. Some were already living in the United States while one was physically paralyzed. Because of these circumstances, it was incumbent upon the prosecution to present witnesses other than those listed in the information. Moreover, there is no law which limits the presentation of witnesses to those listed only in the information. No law mandatorily requires that the names of the witnesses be first listed before one could be called to testify in open court. As long as a person is qualified to become a witness, he may be presented as one regardless of whether his name was included in the information or not.

Third: The defense accuses the prosecution of suppression of evidence for "its failure to present as witnesses Marcial Gavino and Francisco dela Rosa whose names appeared in the list of witnesses for the prosecution."

This conclusion is bereft of any basis. The failure of the prosecution to present Marcial Gavino and Francisco dela Rosa is not tantamount to suppression of evidence. There is no indication that the testimonies of these witnesses, when presented, would be adverse to the prosecution. Likewise, the prosecution could not be accused of suppression of evidence considering that these two witnesses, Marcial Gavino and Francisco dela Rosa, were likewise available to the defense. If the defense really wanted to hear the testimonies of Marcial Gavino and Francisco dela Rosa, then it could have subpoenaed the two and presented them as unwilling or hostile witnesses.

Fourth: The defense argues that the "lower court erred in convicting the accused of the crime of murder based merely on the uncorroborated testimony of Alicia Paras which was contradicted by physical evidence."

This argument leaves much to be desired. Witnesses are weighed and not numbered. A testimony of a single witness may suffice to warrant conviction unless it is glaringly wanting in every material respect. As previously

discussed, this Court finds no reason to discredit the testimony of Alicia Paras. Besides, it is not true that her testimony was uncorroborated. Precisely, Anita Lacanlalay and the medico-legal officer were presented to corroborate her testimony. More importantly, her testimony needed no further corroboration to be believed. There was also no truth to the defense's allegation that Paras's testimony contradicted the physical evidence.

Fifth: Accused-appellant claims that the lower court erred in holding that treachery and evident premeditation attended the commission of the crime. With regard to the qualifying circumstance of evident premeditation, this Court agrees with the defense that it did not attend the killing. For evident premeditation to be appreciated, the following elements must be present: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to their determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of the act. The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.[2] In the case at bar, all the above-enumerated circumstances were not proved nor established by the prosecution. Consequently, the court below erred in finding that the qualifying circumstance of evident premeditation attended the commission of the crime.

On the other hand, the court a quo correctly appreciated the qualifying circumstance of treachery. Under paragraph 16, Article 14 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender employs 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 any defensive or retaliatory act which the victim might make. The settled rule is that treachery can exist even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself. What is decisive is that the execution of the attack, without the slightest provocation from a victim who is unarmed, made it impossible for the victim to defend himself or to retaliate.[3]

As narrated by the prosecution witnesses, the victim, Rey Buzon, had no inkling whatsoever of the forthcoming attack by accused-appellant. In fact, Paras even greeted him. Even when he uttered the words "Tarantado! Matigas talaga ang ulo mo. Babarilin kita!", Buzon was unable to react as the former immediately drew his gun and shot him. Buzon did not in any way provoke accused-appellant into attacking him. In fact, he was already ensconced at the backseat of the owner-type jeep owned by his brother, Castor Buzon, on his way to see his accountant. The relative positions of accused-appellant and his victim ensured the execution of the crime with no harm to the life and limb of the former. Also, because of his position, there was no way for Buzon to avoid the attack nor could he effectively retaliate. Moreover, the attack was swift and unexpected, depriving Buzon of the luxury of time to run for cover or defend himself. In one case,[4] this Court ruled that "treachery is present where the shooting was unexpected and sudden, giving the unarmed victim, no chance whatsoever to defend himself."

Last: The theory advanced by the defense is simply untenable. Right after the shooting incident, the witnesses for the prosecution have already pointed to the accused-appellant as the perpetrator of the crime. This Court finds it improbable for the accused-appellant not to have known this considering that several tabloids carried the story the next day naming him as the only suspect. If indeed he was not guilty, then, he should have lost no time in denouncing the accusations hurled against him and reveal to all that it was Willie Fernandez, alias "Willie Toma," who killed Buzon, if this was indeed true.

According to accused-appellant himself, he was a neighbor of the Buzons for years. In fact, Buzon was his friend. He did not ascribe any ill-motive on the part of the prosecution witnesses who testified against him. Corollarily, Alicia Paras even admitted being a friend and a relative by affinity of Fernando Tan. It is, therefore, confusing

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that, given this set of circumstances, the prosecution witnesses were unanimous in pointing to accused-appellant as the killer of Rey Buzon. Thus, it can only be concluded that the prosecution witnesses were telling the truth in saying that it was accused-appellant who killed Rey Buzon at 1:00 o'clock in the afternoon of April 25, 1988. As the killing happened in broad daylight, there was no doubt that the prosecution witnesses actually saw accused-appellant shoot Rey Buzon. In fact, one of the prosecution eyewitnesses, Alicia Paras, even had a face-to-face encounter with accused-appellant.

This Court, however, finds the award of P50,000.00 for actual damages not supported by evidence. To justify a grant of actual damages, it is necessary to show the amount of actual loss with the best evidence available.[5] In this case, no receipts were presented as proof to substantiate the award. There is no such thing as "standard Supreme Court - set amount" of P50,000.00 as the lower court ruled.

As to the award of P4,390,848.00, for loss of earnings, this Court finds said amount to be likewise unsubstantiated. No proof was presented to support the claim that Buzon was earning $4,000.00 a month. The amount was a mere estimate with no documentary evidence. While there was testimony that the victim worked as a mechanical engineer at Bechtel Corporation in the United States, the prosecution failed to present a single payslip or income statement of the deceased. As such, the $4,000.00 was a rough estimate which has no evidentiary basis.

The award of exemplary damages, likewise, cannot be sustained as no aggravating circumstance attended the commission of the crime. The award of attorney's fees in the amount of P50,000.00 is reduced to P25,000.00.

WHEREFORE, the decision of the trial court finding accused-appellant Fernando Tan alias "Ding" guilty of murder and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that the amount of P50,000.00 is awarded as civil indemnity to the heirs of the victim. The awards for actual damages, for loss of earnings and for exemplary damages are DELETED for insufficiency of evidence. The award of attorney's fees is reduced to P25,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Rollo, p. 31.

[2] People of the Philippines v. Jose Chua y Valencia, G.R. No. 121792, October 7, 1998.

[3] People of the Philippines v. Wilfredo Felotes, G.R. No. 124212, September 17, 1998.

[4] People of the Philippines v. Elpidio Delmendo y Urpiano, G.R. No. 123300, September 25, 1998.

[5] People v. Macahia, G.R. No. 130931, May 19, 1999.

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