

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO BARRO, JR.,*G.R. No. 129892. October 16, 2000*

Ponente: QUISUMBING, J.

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For review is the decision of the Court of Appeals,[2] in CA-G.R. No. 18290, which affirmed the decision of the Regional Trial Court of Cadlan, Pili, Camarines Sur, Branch 32, convicting appellant of the crime of murder. The Court of Appeals increased the penalty to reclusion perpetua and accordingly certified the case to this Court for review, pursuant to Rule 124, Section 13, of the Rules of Court.

The case for the prosecution, as summarized by the Office of the Solicitor General, is as follows:[3]

"At about 10:30 o'clock in the evening of 31 October, 1992, witness Villaruel was in his house, with his family, in La Purisima Nuevo, Ocampo, Camarines Sur; some fifty meters away from his house, was the house of Pedro Largo, where in the vacant pig-pen, four persons were having a drinking spree (tsn, May 13, 1994, p. 3); these four were Pedro Largo, Dennis Cano, Ruben Barro and one nicknamed 'Onong' (tsn, May 13, 1994, pp. 3 & 4); the drinking partners were talking in a loud voice, impelling Villaruel to go down his house, going in the direction of his neighbor's pig-pen where the rowdy drinkers were, but on his way, he notice Ruben Barro and 'Oneng' leave the two namely, Pedro Largo and Dennis Cano sitting side by side, with Dennis Cano's back resting on the cemented wall of the pen (tsn, May 13, 1994, pp. 8 & 11); with his back resting on the wall of the pig-pen; Dennis Cano was suddenly attacked from behind by Rodolfo Barro Jr. with a bladed instrument about a foot long, hitting the former with that first stab just below the left scapula (tsn, May 13, 1994, pp. 5 & 11); the second stab wound inflicted on Cano by Barro Jr. found its mark about 8 inches below the left armpit (tsn, January 20, 1994, pp. 4 & 7; tsn, August 4, 1994, p. 4); even as Cano had already sustained two stab wounds, he still managed to walk in the direction of the house of Pedro Largo some four meters away, where he collapsed (tsn, May 13, 1994, pp. 13 & 15); Pedro Largo and the father of Dennis Cano brought the wounded Dennis Cano by jeep to the Camarines Sur Regional Hospital in Naga City, where, in spite of medical attendance, Cano expired on 6 November, 1992 (tsn, January 20, 1994; pp 6 & 7; tsn, May 13, 1994, p. 6); there is no dispute that Cano died of the stab wounds inflicted on him by Rodolfo Barro, Jr. on the night of 31 October 1992 (tsn, January 20, 1994, p. 7)."

Appellant relied on outright denial and alibi for his defense,[4] thus:

"Accused Rodolfo Barro, Jr. denied having anything to do with the killing of Dennis Cano. He testified that on the alleged date and time of the stabbing incident, he was at Buang, Tabaco, Albay where he permanently resides. He did not know the victim and had never been to La Purisima, Ocampo, Camarines Sur. And that before his arrest, he had been residing in Buang, Tabaco, Albay, with his family and worked as a permanent laborer in the land owned by Danilo Bonita. (TSN, August 18, 1994, pp. 2-4)

Danilo Bonita corroborated the foregoing testimony of accused Rodolfo Barro, Jr. (TSN, October 4, 1994, pp. 3-5)"

We shall now review the proceedings below and the evidence offered by the prosecution as well as the defense. On February 2, 1993, the following Information for murder was filed against appellant:[5]

"That on or about the 31st day of October, 1992 in Barangay La Purisima Nuevo, Municipality of Ocampo, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab with a double bladed weapon, one DENNIS CANO, thereby inflicting upon the latter stab wounds on his body which caused his death, to the damage and prejudice of the offended party in such amount as maybe proven in court.

ACTS CONTRARY TO LAW."

Upon arraignment, appellant entered a plea of not guilty.[6]

During trial, the prosecution presented the following witnesses: (1) Pedro Largo, the remaining companion of the victim when he was stabbed, who witnessed the stabbing incident, (2) Renato Villaruel, Largo's neighbor, who also witnessed the stabbing incident, (3) Federico Cano, father of the victim, and (4) Dr. Jullie Sy, a resident physician at the Bicol Regional Hospital, Naga City, who conducted the autopsy on the body of the victim.

Pedro Largo testified that he knew appellant because the latter used to work at their farm. After the drinking session, Largo and the victim remained seated at a table facing each other. An electric bulb hung overhead. While Largo and the victim were swapping stories, appellant suddenly came up behind the victim and stabbed him with a sharp bladed weapon. Largo testified that he recognized appellant, who was wearing a black t-shirt. After stabbing the victim, appellant ran away.[7]

Renato Villaruel, Largo's neighbor, testified that he was about to approach the drinking session to verify what the loud noise was all about when he saw two persons get up and leave the group. The remaining two were Largo and the victim. When he was about 10 meters away, he saw appellant approach the victim from behind and stab him twice with a bladed instrument. After stabbing the victim, appellant immediately ran away. Villaruel helped Largo bring the victim to the hospital.[8]

Federico Cano testified as to the expenses incurred as a result of the death of his son.

The autopsy report revealed that the victim sustained two stab wounds - "3.2 cm. left infra scapular area" and "3 cm. level of the 9th intercostal space, 8 cm. lateral aspect left to the vertebra," and that the second stab wound penetrated the thoracic and abdominal cavity. The victim also suffered from a cerebral edema as a result possibly of an inflammation or a fall.[9]

For the defense, appellant and Danilo Bonita testified. Appellant denied knowing the victim or prosecution witnesses Largo and Villaruel. He claimed that he had never gone to La Purisima Nuevo, Ocampo, Camarines Sur in his entire life. However, he does not know why the prosecution witnesses would point to him as the assailant in this case.[10]

Danilo Bonita testified that appellant was a laborer in his plantation in Buang, Tabaco, Albay from 1991 up to August 1993 when the latter was arrested. On October 31, 1992, the day of the incident, appellant was then working for him. However, when pressed by the Court to present proof, Bonita could not present any record showing that appellant was employed as his laborer.[11]

On rebuttal, the prosecution presented Rogelio Largo to debunk appellant's testimony that he had never been to La Purisima, Ocampo, Camarines Sur. Rogelio testified that he hired appellant as a laborer in his riceland located in said place from June of 1992 until the end of October 1992. He likewise presented in court a notebook prepared

by his wife indicating that on October 31, 1992, they paid the salary of appellant for the day.[12]

On sur-rebuttal, appellant claimed that the testimony of Rogelio Largo was false. He denied even knowing the latter or even having any misunderstanding with him. He insisted that he never went to La Purisima at anytime in 1992.[13]

On February 2, 1995, the trial court rendered a decision[14] convicting appellant of the crime of murder, disposing thus:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered, finding the accused Rodolfo Barro, Jr. also known as Arnulfo Barro, guilty, beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Art. 248 of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of 17 years, 4 months, and 1 day of Reclusion Temporal, as minimum to 26 years 8 months and 1 day of Reclusion Perpetua, medium period as the maximum, to indemnify the heirs of Dennis Cano the sum of Fifty Thousand (P50,000.00) Pesos, as indemnity for his death, plus the sum of Thirty Four Thousand, Two Hundred Sixty-One Pesos and Ten Centavos (P34,261.10) as actual and consequential damages, with all the accessories of the law, plus costs; the accused is credited in full for his preventive detention.

SO ORDERED. Given this 2nd day of February, 1995 at Pili, Camarines Sur."

On appeal, the appellate court rendered its decision[15] affirming the judgment of the trial court but, as already stated, increasing the penalty to reclusion perpetua. Our primary concern now is whether the imposition of this penalty, as well as the finding of guilt of appellant, is proper.

In our Resolution dated November 17, 1997,[16] the Court resolved to grant the Manifestation filed by the Public Attorney's Office adopting the appellant's brief filed before the CA as its appellant's brief and submitting the case for decision.

Appellant contends[17] that the trial court erred in:

- ... GIVING FULL FAITH AND CREDENCE TO THE INCONSISTENT IF NOT CONFLICTING TESTIMONY OF THE PROSECUTION WITNESSES ANENT THE STABBING INCIDENT IN QUESTION AND IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.
- ... HOLDING THAT TREACHERY WAS PRESENT IN THE COMMISSION OF THE CRIME ASCRIBED AGAINST APPELLANT.
- ... RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF APPELLANT WAS NOT PROVED BEYOND REASONABLE DOUBT.

In his brief, appellant assails the credibility of prosecution witness Villaruel by pointing out the following inconsistencies between his sworn statement and his testimony in court. First, in his sworn statement, Villaruel stated that the victim was stabbed while the latter was walking with Pedro Largo. But on the witness stand, Villaruel testified that the victim was seated when he was stabbed. When asked about the inconsistency, Villaruel explained that his earlier statement was incorrect. Second, Villaruel stated in his affidavit that Ruben Barro and Oning Divinaflores were with the victim when the latter was stabbed and that the two ran away with appellant after the stabbing incident. But Villaruel testified later on that Ruben and Oning left as he was approaching the group. Further, during direct examination, Villaruel testified that he witnessed the actual stabbing, but on cross-examination, he testified that he did not notice the stabbing incident until the victim uttered that he was stabbed.

Appellant likewise assails the credibility of prosecution witness Largo by pointing out the following

inconsistencies in his testimony: First, on direct examination, Largo testified that there was a heated altercation between the victim and appellant prior to the stabbing incident. On cross, Largo testified that there was no such altercation. Second, during preliminary examination, Largo testified that they drank gin, while on the stand, he testified that they drank 3 bottles of "beer grande" and 3 bottles of gin. Further, in his sworn statement, Largo testified that he saw appellant stab the victim with his right hand, while on the stand, Largo testified that appellant stabbed the victim with both hands. Further, in his sworn statement, Largo testified that the weapon was double-bladed, while on the stand, he said it was single bladed only. When confronted by the trial judge, Largo could not explain these inconsistencies.

Appellant further claims that Rogelio Largo's testimony that appellant was his laborer has no basis, since the notebook presented in court did not contain the signature of appellant that he indeed received payment for his services.

Lastly, appellant contends that even assuming that he stabbed the victim, their prior argument negates the finding of treachery. He should therefore be found guilty only of homicide.

The OSG, in praying for the affirmance of the judgment, contends that the alleged inconsistencies in the aforementioned testimonies, particularly what liquor the victim and the witnesses were drinking, whether the knife was single or double bladed, or whether appellant used his right hand or both hands in stabbing the victim, pertain to minor matters which do not detract from the veracity of their testimonies. Instead, they should be considered badges of truth considering the natural fallibility of human perceptions. Further, what Largo actually testified was that there was a prior altercation between the victim and appellant a long, long time ago, not on the night of the murder. As to the actual position of the victim when he was stabbed, Villaruel clarified that the victim was seated but was still able to walk a few steps after he was stabbed. Further, the OSG contends that appellant's defense of alibi cannot prevail over his positive identification by two prosecution witnesses. Lastly, treachery clearly attended the killing as the attack on the victim was sudden and from behind.

The issues now before us pertain to the credibility of witnesses and the existence of treachery.

When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The rule admits of certain exceptions, namely: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence.[18] The Court is likewise not precluded from making its own assessment of the probative value of the testimony of the witnesses on the basis of the transcript of stenographic notes (TSNs) thereof.[19] After conducting a thorough review of the records, including the transcripts of stenographic notes we find no cogent reason to reverse the findings of the trial and appellate courts. In this case, the minor consistencies pointed out by appellant do not refer to the crux of the matter, which is the positive identification of appellant as the one who stabbed the victim from behind, twice. Minor and inconsequential flaws in the testimony of witnesses strengthen rather than impair their credibility.[20] The test is whether their testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole.[21] Contradictions between the contents of an affiant's affidavit and his testimony on the witness stand do not always militate against the witness' credibility because it has long been within judicial notice that affidavits, which are usually taken ex parte are often incomplete and inaccurate.[22] Further, appellant testified that he could not think of any reason why the prosecution witnesses would falsely implicate him in the commission of the crime.[23] Absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[24]

Appellant's defense of denial and alibi must fail in the face of his positive identification by no less than two eyewitnesses,[25] both of whom are known to him. For the defense of alibi to prosper, the requisites of time and place must be strictly met.[26] These, appellant failed to prove. Not only that, no less than three eyewitnesses placed him at the locus criminis at the time of the incident. To all their positive testimonies, appellant simply made a blanket denial, stating that he does not know them, and that he was not there.

As observed in *People v. Ganan, Jr.*[27]

"The experience of courts and the general observation of humanity teaches us that the natural limitations of our inventive faculties are such that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.

For this reason it will be found that perjurers usually confine themselves to the incidents immediately related to the principal fact about which they testify, and when asked about collateral facts by which their truthfulness could be tested, their answers not infrequently take the stereotyped form of such expression as 'I don't know' or 'I don't remember.'"

Regarding treachery, we find that both the trial and appellate courts properly appreciated the existence of treachery. Contrary to the assertion of appellant, the killing was not preceded by a quarrel. While prosecution witness Largo stated that "he heard from other people that appellant and the victim had a previous altercation a long, long time ago," such testimony is hearsay. Hearsay evidence, whether objected to or not, possesses no probative value unless the proponent can show that the same falls within the exception to the hearsay rule.[28] Considering both the evidence of the prosecution and the defense, we find that the Court of Appeals correctly held that:

"... It is established beyond reasonable doubt that accused-appellant suddenly appeared behind the victim and stabbed the latter. There is treachery when the attack on the victim was sudden and unexpected and from behind and without warning with the victim's back turned towards his assailant. (*People v. Boniao*, 217 SCRA 653, 655)."[29]

Where the accused's attack was so sudden and launched from behind that the victim was caught off guard without an opportunity to defend himself,[30] treachery is present. Treachery having attended the killing, the crime was correctly characterized as murder. However, evident premeditation, though alleged in the Information, was not sufficiently proved by clear and convincing evidence.

At the time of the commission of the crime on October 31, 1992, the penalty for murder was reclusion temporal to death. There being no mitigating nor aggravating circumstance, the Court of Appeals correctly held that the penalty to be imposed on appellant should be reclusion perpetua.

As to the award of damages, the amount of actual damages is supported by receipts and should be sustained. However, while the father of the victim testified as to the actual damages sustained as a result of the death of the victim, he did not testify as to moral damages. Hence, for lack of competent proof, we cannot award moral damages.[31]

WHEREFORE, the judgment of the Court of Appeals in CA-G.R. CR No. 18290 is hereby affirmed. Appellant RODOLFO BARRO, JR. is hereby found guilty of murder and sentenced to suffer the penalty of reclusion perpetua, and ordered to pay the heirs of the victim the amount of P50,000.00 as indemnity, and P34,261.10 as actual damages. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.

Buena, J., no part.

[1] The records did not indicate his middle name or initial.¹ accused-appellant

[2] Penned by Associate Justice Ma. Alicia Austria-Martinez, concurred in by Associate Justices Arturo B. Buena and Romeo J. Callejo, Sr., of the Third Division.

[3] Appellee's Brief, CA Rollo, pp. 48-49.

[4] Appellant's Brief, CA Rollo, p. 25.

[5] Records, p. 1.

[6] Id. at 60.

[7] TSN, January 20, 1994, pp. 2-25; TSN, May 13, 1994, p. 3.

[8] TSN, May 13, 1994, pp. 3-20.

[9] TSN, August 4, 1994, pp. 2-6; Autopsy Report, Exhibit "C," Records, p. 13. The public prosecutor manifested that the Autopsy Report was mistakenly marked as Exh. "A" and should have been marked as Exh. "C."

[10] TSN, August 18, 1994, pp. 2-5.

[11] TSN, October 4, 1994, pp. 3-9; October 28, 1994, p. 2.

[12] TSN, November 16, 1994, pp. 2-4, 10-14.

[13] TSN, December 6, 1994, pp. 2-4.

[14] Records, pp. 165-166.

[15] CA Rollo, pp. 70-77.

[16] Rollo, p. 8.

[17] CA Rollo, p. 22.

[18] People v. Acaya, G.R. No. 108381, March 7, 2000, p. 6.

[19] Id. at 7.

[20] People v. Sabalones, 294 SCRA 751, 794 (1998).

[21] People v. Realin, 301 SCRA 495, 511 (1999).

[22] People v. Tanihon, 293 SCRA 220, 229-230 (1998).

[23] TSN, August 18, 1994, p. 5.

[24] People v. Rendoque, G.R. No. 106282, January 20, 2000, pp. 10-11.

[25] People v. Quillosa, G.R. No. 115687, February 17, 2000, p. 9.

[26] Ibid.

[27] 265 SCRA 260, 287 (1996), citing *U.S. v. Burns*, 41 Phil. 418 (1921).

[28] *People v. Villaviray*, 262 SCRA 13, 20 (1996).

[29] Rollo, p. 74.

[30] *People v. Flores*, G.R. No. 129284, March 17, 2000, p. 12.

[31] *People v. Espina*, G.R. No. 123102, February 29, 2000, p. 13.

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