PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO CARIÑO @ “ORLANDO,” ACCUSED-APPELLANT.

G.R. No. 129960. August 28, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated December 3, 1996, of the Regional Trial Court of Candon, Ilocos Sur, Branch 23, finding appellant Pedro Cariño @ "Orlando" guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim, Edmundo[2] Milan, the amount of P50,000.00 for loss of life, and P67,805.00 for burial and funeral expenses.

Appellant was charged with murder in an Information which reads:

> That on or about the 16[th] day of September, 1992, in the municipality of Sta. Cruz, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack, stab and hack one Edmundo Milan, thereby inflicting upon the latter mortal wounds on different parts of his body, which wounds necessarily produced the death of said Edmundo Milan.
>
> CONTRARY TO LAW.[3]

The appellant was arraigned on May 7, 1993 and with the assistance of counsel, pleaded "Not Guilty" to the crime charged. Thereafter, trial on the merits ensued.

The prosecution anchored its case mainly on the testimony of Rolando Lovinaria. According to him, sometime in the evening of September 16, 1992, he and his brother-in-law, Edmundo Milan, attended the wake of one Dominador Opinion at Sevilla, Sta. Cruz, Ilocos Sur.[4] During the wake, a misunderstanding occurred between Edmundo and appellant Pedro Cariño. The misunderstanding was apparently caused when Edmundo touched the head of Pedro,[5] getting the ire of Pedro who then tried to get Edmundo to go outside with him to engage in a boxing bout.[6] Rolando intervened and pacified both of them. Thinking that everything was settled, Rolando and Edmundo stayed at the wake watching a card game. After ten minutes, the two of them got up to go home. After a few moments, Rolando noticed that Pedro was following them on the road and was going to attack Edmundo.[7] Rolando turned to meet Pedro and embraced him. Rolando pleaded forgiveness for Edmundo's act. Said pleas fell on deaf ears. Pedro, instead of relenting, pulled out a "Rambo" knife[8] and used it to break away from Rolando's embrace. Pedro then pursued Edmundo and upon catching up with him, stabbed the latter twice at the back with the "Rambo" knife.[9] Pedro then hacked Edmundo on the head. After Pedro had left, Rolando called for help and brought Edmundo to the hospital where he was pronounced, "Dead on Arrival."[10]

The prosecution then presented as its second witness Dr. Hermenigildo[11] Somera, who had conducted the autopsy on the body of Edmundo Milan. The doctor testified that the victim suffered multiple wounds. The first four wounds were all linear lacerations located on different parts of the body. One was on the parietal area of the scalp. Another wound was 3 cm. along the horizontal plane at level of T4 along paravertebral line, left and found

at the back of the face of the victim. The third wound was five cms. along the horizontal plane at level of L2-L3 along midscapular line, right. The fourth wound was about 3 cms., superficial and found in the middle of the right elbow. The victim also suffered "multiple contusions, hematoma, as well as abrasions in the left peri-orbital RT". The victim also had a black eye and a wound on the lips which the witness said could have been caused by a fall or a direct blow from another person. Finally, Dr. Somera testified that the fatal wounds which caused the death of Edmundo were the ones inflicted from behind.[12]

Brenda Milan, sister of the victim, testified on the expenses which their family spent for the interment, funeral and burial of Edmundo.[13]

The last two witnesses for the prosecution were SPO4 Gregorio Biteng and Councilwoman Marietta Oliver. Their testimonies concerned the recovery of the weapon used in the killing of Edmundo. Oliver testified that the son of Pedro, Orlando Cariño, surrendered a bladed weapon to her, which she then turned over to SPO4 Biteng.[14] Her testimony was corroborated by SPO4 Biteng.[15]

Appellant did not deny the killing but pleaded self- defense. As lone witness for the defense, he testified that at around 9:00 o'clock in the evening of September 16, 1992, he was at the wake of one Dominador Opinion and was playing a card game with Anacleto Anioan, Jr.. While he was playing, Edmundo, who was behind him, suddenly slapped his ears and then left. Appellant tried to regain his composure and "cool his feelings",[16] then followed Edmundo to ask him why he was slapped. He was first stopped by Rolando Lovinaria but was allowed to go[17] after he told the latter that he was just going to talk to Edmundo. Upon catching up with Edmundo, appellant asked him, "Why did you do that to me, Brod?" to which Edmundo replied, "Stupid."[18] Thereafter, Edmundo pulled out a knife[19] from his left waist. Upon seeing the knife, appellant boxed Edmundo, hitting him in the face. Then they grappled for possession of the knife. After he got possession of the knife, appellant brandished it to repel the attacks of Edmundo. Since Edmundo did not stop his aggressive advances, appellant stabbed him with the knife. He then threw the knife and proceeded to the house of Sgt. Servando Manzano to surrender himself.[20]

On December 3, 1996, the trial court promulgated its decision, disposing as follows:

> IN VIEW OF ALL THE FOREGOING, the Court finds the accused, Pedro Cariño, guilty beyond reasonable doubt as principal of the crime of MURDER and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. He is further ordered to pay to the heirs of Edmundo Milan the amount of P50,000.00 for loss of life and also, the amount of P67,805.00 as funeral and burial expenses.
>
> SO ORDERED.[21]

Aggrieved, appellant appealed seasonably. In his brief, he assigns two errors for our consideration.

> 1. THE HONORABLE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF ROLANDO LOVINARIA WHO WAS AN INTERESTED WITNESS BEING THE BROTHER-IN-LAW OF THE VICTIM EDMUNDO MILAN.
>
> 2. THE HONORABLE COURT ERRED IN FINDING THAT THE KILLING OF EDMUNDO MILAN WAS ATTENDED WITH TREACHERY.

Appellant contends that aside from being related to the victim and thus a biased witness, Rolando Lovinaria as the lone eyewitness for the prosecution gave statements which are contrary to human experience. Appellant, however, mentions only one example in his brief, the allegation that Edmundo Milan walked normally even after appellant was already struggling to free himself from Rolando's embrace. According to appellant, this is unbelievable because the normal reaction of a person who had noticed that someone was following him would be to walk

fast.[22]

As for the second assigned error, appellant argues that there can be no treachery in this case as the victim was not unaware of appellant's intent since there was a heated argument between them, preceding the attack. The fact that there was already an existing hostility between the parties prior to the attack should presumably give the victim an opportunity to defend himself.[23]

On the first assigned error, the Office of the Solicitor General (OSG), counters that mere relationship between the victim to a witness does not necessarily impair the latter's credibility, especially if, as in this case, there was no improper motive attributed to the witness which could have impelled him to commit perjury.[24]

However, regarding the second assigned error, the OSG agrees that treachery was not sufficiently established in this case. The OSG recommended that the appellant be found guilty of homicide, instead of murder.[25]

The issues we find in this case are: (1) whether the testimony of prosecution witness Rolando Lovinaria deserves credence; (2) whether self-defense was proved by appellant; and (3) whether treachery qualified the killing of Edmundo Milan to murder.

The first issue raised by appellant is one of credibility. In criminal cases, when the issue is one of credibility of witnesses, appellate courts as a rule will not disturb the findings of the trial court considering that the trial court 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.[26] Hence, the assessment of witnesses' credibility lies within the trial court's province and expertise.[27] There are, of course, exceptions to this rule, as when the trial court has neglected to consider significant facts and circumstances of material importance which could lead to a different result.

Here there is no showing that Rolando Lovinaria was impelled by any improper motive to testify in court falsely. Without showing any reason or motive for a prosecution witness to perjure his testimony, the presumption is that no such improper motive exists, and his testimony is worthy of full faith and credit.[28]

Rolando's relationship with the victim, in our view, does not taint his testimony. In fact, it tends to strengthen his credibility as the interest of the victim's kinsmen is to secure the conviction of the guilty. This natural inclination deters them from implicating persons other than the real culprits.[29]

Appellant's allegation that Rolando gave statements contrary to human experience is not supported by the records. We find his testimony candid, straightforward and credible. There is nothing unbelievable in his statement that Edmundo Milan simply walked even after Pedro broke free from Rolando's embrace. That the victim just walked away, however, bears scant relevance and materiality to the offense charged. What appears highly pertinent are the facts proved by the prosecution beyond reasonable doubt: (1) it was appellant who followed the victim; (2) despite Rolando's intercession, appellant persisted in pursuing and engaging the victim in a fight; and (3) appellant admitted stabbing the victim dead.

While appellant claims self-defense, we find that the requisites therefor have not been established. That the victim was guilty of unlawful aggression[30] is unproved. The claim of appellant that Edmundo had suddenly pulled out a knife is not corroborated. That appellant managed to wrestle away from the victim the knife he used to stab Edmundo is patently self-serving. The ownership of the "Rambo" knife was not established at all. What has been established is that appellant followed the victim outside the place of the wake, after the latter decided to go home. Appellant persisted and confronted the victim even after witness Rolando Lovinaria had pleaded for appellant's forgiveness and embraced appellant to prevent him from pursuing further the victim. Appellant's action showed his own belligerence. Yet it is axiomatic that he who claims self-defense bears the burden of proving that the

killing was preceded by unlawful aggression on the part of the victim.[31] Here we find, instead, appellant's action highly bellicose. While appellant insists that he stabbed the victim only once, not counting his first swinging attack of which he was not certain whether he had hit the victim. But according to the results of the autopsy performed by Dr. Somera, the victim's body bore at least four wounds aside from contusions and abrasions on the face. Also, according to Dr. Somera's testimony, several of the victim's wounds were inflicted from behind. We are, therefore, unable to accept appellant's plea of self-defense for utter lack of merit.

However, we agree with the OSG's recommendation that appellant be held liable only for homicide, not murder. In this case, the qualifying circumstance of treachery was not conclusively established. For treachery to exist, the following requisites must be met: (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[32] The facts show that Edmundo was placed on guard concerning a possible assault by Pedro. First, there was a heated argument between them at the place of the wake. Second, Edmundo was not unaware that he and Rolando were followed outside by appellant, who did not adopt any means to conceal himself or hide his intention of confronting Edmundo. Third, the abrasions and contusions on Edmundo's face show that Edmundo was able to put up a fight before he was fatally stabbed. These circumstances negate the existence of treachery in the commission of the offense.

Absent treachery as a qualifying circumstance, appellant can only be convicted of homicide.[33] Art. 249 of the Revised Penal Code provides that the penalty for homicide is reclusion temporal. There being no mitigating nor aggravating circumstances and applying the Indeterminate Sentence Law, the imposable penalty on appellant is imprisonment ranging from eight (8) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum with all the accessory penalties provided by law.[34]

For funeral and burial expenses, the award of P67,805.00 ought to be reduced. The records reveal that in this connection, the prosecution was able to present a receipt[35] for P9,000.00, a certification[36] for P7,000.00 and P25,805.00, or a total of P41,805.00 only. Pursuant to current jurisprudence,[37] we can only award what has been duly proved in this case, by documentary evidence. The award of P50,000.00 as civil indemnity is also in accord with prevailing jurisprudence.[38] Lastly, pursuant to the ruling in People vs. Uldarico Panado,[39] the amount of P50,000.00 should also be awarded to the heirs of Edmundo Milan as moral damages for the brutal slaying of the victim.

WHEREFORE, the appealed decision of the Regional Trial Court of Candon, Ilocos Sur, is AFFIRMED WITH MODIFICATION. Appellant PEDRO CARIÑO is found guilty of HOMICIDE and sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. Appellant is also ordered to pay the heirs of the victim P41,805.00 as actual damages; P50,000.00 as civil indemnity; and P50,000.00 as moral damages.

SO ORDERED.

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

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[1] Rollo, pp. 17-25.

[2] Sometimes referred to as "Edmund" in the records.

[3] Id. at 9.

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[4] TSN, June 3, 1993, pp. 5-6.

[5] Id. at 6.

[6] Id. at 7.

[7] Id. at 9.

[8] About 1 ft. long, per TSN, June 3, 1993, p. 10.

[9] Id. at 10-12.

[10] Id. at 13-14.

[11] Also spelled as "Herminigildo."

[12] TSN, Sept. 14, 1993, pp. 5-9; See also Exh. "B", Records, p. 2.

[13] TSN, March 4, 1994, pp. 6-10.

[14] TSN, May 12, 1994, pp. 5-7.

[15] Id. at 3-4.

[16] TSN, October 16, 1995, p. 7.

[17] Upon cross-examination, appellant testified that he struggled to break free from Rolando's hold, Id. at 18.

[18] Id. at 6-9.

[19] About 6 to 7 inches, Id. at 9.

[20] Id. at 9-11.

[21] Rollo, pp. 24-25.

[22] Rollo, p. 37.

[23] Id. at 40.

[24] Id. at 72.

[25] Id. at 73-76.

[26] People vs. Mendoza, GR. No. 128890. 332 SCRA 485, 494 (2000).

[27] People vs. Tanoy, GR No. 115692, 332 SCRA 12, 17 (2000).

[28] People v. Acaya, G.R. No. 108381, 327 SCRA 269 (2000).

[29] People vs. Dimailig, G.R. No. 120170, 332 SCRA 340, 350 (2000), citing People vs. Quilang, G.R. Nos. 123265-66, August 12, 1999, 312 SCRA 314.

[30] People vs. Saragina, G.R. No. 128281, 332 SCRA 219, 225 (2000).

[31] See Reyes, L.B., The Revised Penal Code, Book One, 12[th] Edition, pp. 150-151; Also, People vs. Cotas, G.R. No. 132043, 332 SCRA 627, 635 (2000).

[32] Reyes, supra, pp. 409 - 410.

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[33] Article 249, Revised Penal Code.

[34] People vs. Mangahas, G.R. No. 118777, 311 SCRA 385, 406 (1999).

[35] Exhibit C-1, Records, p. 63.

[36] Exhibit C-2, Records, p. 64.

[37] Art. 2199, Civil Code; People vs. Uldarico Panado, et.al., G.R. No. 133439, December 26, 2000; People vs. Avillana, G.R. No. 119621, 332 SCRA 19 (2000); People vs. Guillermo, G.R. No. 113787, 302 SCRA 257 (1999).

[38] People v. Silvestre, G.R. No. 125573, 307 SCRA 68, 90-91 (1999); People v. Saragina, supra, p. 240.

[39] G.R. No. 133439, December 26, 2000.

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