

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL MATARO Y ELIZAGA AND NICK PERUCHO Y SINGSON, ACCUSED-APPELLANTS.

G.R. No. 130378. March 08, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated January 29, 1997, of the Regional Trial Court, Quezon City, Branch 88, finding appellants herein Arnel Mataro and Nick Perucho guilty of murder, and sentencing each of them to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim, Enrique Castillo, P725,000.00 as actual damages and P1,000,000.00 as moral damages, and to pay the costs.

Two separate informations were filed against appellants, thus:

Q-93-41704 against accused Arnel Mataro

That on or about the 23rd day of October 1992 in Quezon City, Metro Manila, Philippines, the above-named accused, conspiring, confederating with other persons whose true identities, whereabouts and other personal circumstances of which have not as yet been ascertained and mutually helping one another, with intent to kill, with treachery, superior strength and evident premeditation, did, then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one SPO1 ENRIQUE CASTILLO, JR. Y BALBIN, by then and there shooting the latter with the use of firearms thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said SPO1 ENRIQUE CASTILLO, JR., Y BALBIN.

Contrary to law.

Q-93-48440 against accused Nick Perucho

That on or about the 23rd day of October, 1992, in Quezon City, Philippines, the above-named accused, conspiring and confederating with and mutually helping with his co-accused / ARNEL MATARO, who was then charged with the same offense in the Regional Trial Court, Branch 88, this City docketed as Crim. Case No. Q-93-41704, with intent to kill, with treachery, superior strength and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of SPO1 ENRIQUE CASTILLO, JR. Y BALBIN, by means then and there shooting the latter with the use of firearms, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said SPO1 ENRIQUE CASTILLO, JR. Y BALBIN.

Contrary to law.[2]

Initially, the information against Nick Perucho was filed in RTC, Branch 87, but upon motions of complainant Evangeline Castillo and Asst. City Prosecutor Ralph S. Lee, the two cases were consolidated. Both accused pleaded "Not Guilty" during their respective arraignment. Trial thereafter on the merits ensued.

The prosecution presented two eyewitnesses, Victor Nilo Fernandez and Reden Guzman.

Fernandez, a jeepney driver whose Cubao-Divisoria route passed along Magsaysay Blvd., declared that on October 23, 1992, at around 4:00 P.M., he saw SPO1 Enrique Castillo, Jr., stop a light brown Toyota Corona. Mataro and Perucho disembarked and talked to Castillo. After a while, Mataro and Perucho went to their car and returned with an armalite and a .45 cal. firearm. Castillo raised his hands and motioned the two accused to move along and forget their citation. The two accused shot him instead.[3]

Guzman testified that on October 23, 1992 at around 4:15 P.M., the passenger jeepney he was riding stopped in front of SM Centerpoint. At the same time, he saw the two accused shoot SPO1 Castillo.[4]

Dr. Juan Zaldariaga, the NBI medico-legal officer, testified that three gunshot wounds were inflicted upon the victim, one on the left side of the chest and two on the left side of the back. He said one of the wounds could have been inflicted while the victim was standing up, facing his assailant who was about three feet away. Another wound could have been inflicted while the victim was already in a supine position facing up with the assailant on top of the head of the victim. The third wound could have been inflicted when the victim was already lying face down.[5]

SPO3 Jaime Santos testified that he was the one who handled the investigation of the case. He said that after the case was assigned to him, he immediately contacted Victor Nilo Fernandez and asked him whether he could still identify the two persons he saw shooting SPO1 Enrique Castillo. When Fernandez confirmed that he could, SPO3 Jaime Santos accompanied him first to the PNP jail in Camp Crame where Fernandez identified Mataro. They then proceeded to the Muntinlupa jail where Fernandez identified Perucho. Both identifications were made in line-ups.[6]

The widow of the victim, Evangeline Castillo, testified on the expenses she incurred as a result of her husband's death.[7]

The appellants interposed alibi and denial in their defense. They presented Moriето Bello who testified that he was with accused Mataro at around 4:00 P.M. to 5:00 P.M. on October 23, 1992. They were at the Villamor Vulcanizing Shop located between V.V. Soliven and SSS Village in Marikina where Mataro was having his jeep fixed.[8]

Another witness for the defense, Amy Pangilinan, testified that she was with Mataro in the afternoon of October 23, 1992 with a certain Gemma Sunga. They went to Antipolo to buy a pig for her birthday. On their way home they had engine trouble. They went to a vulcanizing shop for at least one hour waiting for the jeepney to be fixed.[9]

Appellant Mataro testified that on October 23, 1992, he went to Antipolo with Gemma Sunga and Amy Pangilinan to buy a pig for the latter's birthday. They left Fairview at past 12:00 noon. They reached Antipolo at around 3:00 P.M. and they left at around 5:00 P.M. The jeepney had engine trouble so they stopped at Villamor Vulcanizing Shop in Cupang, Antipolo for about an hour. He said that he was arrested by operatives of the PACC on December 21, 1992 on suspicion that he was a member of a kidnap for ransom gang. He admitted knowing Perucho since they were both bodyguards of Atty. Leonardo Laurente. He denied shooting SPO1 Castillo. During cross-examination, he testified that as a former military man he was given a machine gun but had returned it to their supply officer. He only met Perucho when he arrived in Cagayan.[10]

Defense witness Arturo dela Cruz testified that he was with Perucho in Aklan on October 23, 1992 and that Perucho left Aklan only sometime in November of 1992.[11]

Appellant Perucho testified that he was in Aklan from June 1992 until November of the same year. He said he worked for one Atty. Laurente as a bodyguard for the elections after the latter helped in his release from detention. He denied the accusation against him.[12]

On January 29, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, accused Arnel Mataro and Nick Perucho are hereby found GUILTY beyond reasonable doubt for the crime of murder, both to suffer the penalty of reclusion perpetua and to pay jointly and severally the heirs of Enrique Castillo the following: 1)P725,000.00 as actual damages; 2)P1,000,000.00 as moral damages; and 3) to pay the cost.

SO ORDERED.[13]

The accused filed this appeal. Appellants alleged that the trial court erred in:

... CONVICTING THE ACCUSED APPELLANTS AND IN NOT ACQUITTING THEM:

(A) ON GROUNDS OF REASONABLE DOUBT; AND

(B) BY APPLYING THE "EQUIPOISE RULE." [14]

The appellants question the credibility of Fernandez and Guzman. They aver that during the investigation, a certain Ebalde gave his statements to the police that the car used by the assailants was a gray Kia Pride. They also point out that the witnesses of the prosecution did not agree on the number of persons riding the car which was stopped by Castillo. They likewise raise that during the initial investigation, the eyewitnesses described Mataro as a man between 35 to 40 years old. Mataro was only 24 years old at the time of the incident. Finally, they invoke the "equipoise" rule[15] because their guilt had not been established beyond reasonable doubt.[16]

The Office of the Solicitor General, for its part, asserts that the testimonies of the witnesses were positive, straightforward and unerring. The appellants were identified by Fernandez in two separate line-ups and during trial. Witness Guzman likewise identified them during the trial.

That Mataro was described as 35 years old is explained by Mataro's face which did not look a young 25.

On the "equipoise" rule, the OSG asserts that positive and unerring identification made by the witnesses rule out any erroneous identification, thus the "equipoise" rule need not be applied.[17]

In *People vs. Teehankee, Jr.*, 249 SCRA 54 (1995), we enumerated the requisite for credible identification as follows:

- 1) the witness' opportunity to view the criminal at the time of the crime;
- 2) witness' degree of attention at that time;
- 3) the accuracy of any prior description given by the witness;
- 4) the level of certainty demonstrated by the witness at the identification;
- 5) the length of time between the crime and the identification; and
- 6)
the suggestiveness of the identification procedure.[18]

In our view, these requirements were met. We agree with the trial court when it said:

In the instant case, there is no question that both witnesses had the opportunity to view the incident as it

unfolded before them with a degree of attention that allowed them to take in the important details and recall them clearly. The incident occurred in broad daylight (approximately 4:00 P.M.) in an intersection where witness Coronel, driving his passenger jeep which was temporarily on a standstill, waiting for the go signal from the traffic officer. Being a bare 3 meters away from the three men, it was expected that Co[r]onel had his attention focused on the traffic officer, alert and ready to move as soon as the signal is given. It was no coincidence for him to have watched with keenness the meeting that ended in a shooting. The same is true with witness De Guzman, a passenger riding in a jeepney about 9 to 10 meters from the scene. Passengers are wont to (sic) get curious when their vehicles are stalled not necessarily to see what is happening but to check when their vehicles would be moving. The case of a traffic officer confronted by two (2) motorists is bound to attract attention of passersby particularly passengers like De Guzman interested in the uninterrupted flow of traffic.[19]

Moreover, as repeatedly stressed, appellate court should accord to the factual findings of trial courts and their evaluation great weight and respect concerning the credibility of witnesses.[20] The conditions of visibility being favorable and these witnesses not appearing to be biased, the conclusion of trial courts regarding the identity of the malefactors should normally be accepted.[21]

Fernandez and Guzman had no stake whatsoever in this case. The defense had not been able to impute any ill motive on their part which would prompt them to falsely accuse appellants. Where there is no showing that the prosecution witnesses were actuated by any improper motive, the presumption is that they are not so actuated and their testimony is entitled to full faith and credit.[22]

Appellants claim that the car used by the killers was a gray Kia Pride as averred by Ebalde in his sworn statement and not a Toyota as testified to by Fernandez and Guzman. But Ebalde was never presented in court. His alleged statements are hearsay, without any probative value.[23]

The alleged inconsistency in the number of passengers inside the Toyota Corona is a minor detail which only serves to strengthen, rather than weaken, the credibility of Fernandez and Guzman. The same holds true with respect to the witnesses' erroneous estimate of the age of appellants. Such minor inconsistencies are actually indicative of honest and unrehearsed declarations and responses of witnesses and thereby even enhance their credibility.[24] The fact remains that there were eyewitnesses who positively, categorically and firmly testified that they saw the actual killing. While Fernandez did categorically state that there were three persons inside the vehicle, no such categorical declaration came out from Reden Guzman. His testimony reads:

Q: How far were you while you were riding in a jeep from the policeman who was shot?

A: Nine (9) to ten (10) meters, Sir.

Q: And was your jeep in a stop position or was it moving, Mr. Witness?

A: Stop position, Sir.

Q: How many persons shot this policeman?

A: Two (2) persons.

Q: And will you please tell the Court how did these two (2) persons shoot the policeman?

A:

The policeman stopped the car and the two (2) persons alighted and then after that they went . . .there was a conversation which I did not hear but later on they returned to their vehicle and got their firearms and shot the policeman.

x x x[25]

Nothing therein refers to the number of passengers inside the Toyota Corona.

Appellants interposed alibi and denial in their defense. However, in light of the positive, categorical, and unerring identification of appellants, the defense's plea of alibi and denial must necessarily fail. Alibi cannot stand against strong and positive identification.[26]

The trial court did not err in qualifying the killing as murder. There was treachery in this case since, as testified to by prosecution witness Fernandez, the victim had already dismissed the appellants after they talked to him. The victim was deliberately allowed to enjoy a false sense of security. They shot the victim when the latter had his hands raised. In *People vs. Castro*, 20 SCRA 543 (1967), this Court held:

Where the victim was shot, when his hands were raised, to show that he would not fight, or because of fright, or to try to ward off the shots that were to come, he was clearly in a defenseless position. This circumstance constitutes treachery.[27]

In *People vs. Tobias*, 267 SCRA 229 (1997), we held:

That the attack was preceded by a scuffle, as pointed out by the accused, is of no moment, since treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[28]

In our view, the amount of damages awarded must be modified. An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[29] The trial court awarded P725,000.00 as actual damages and P1,000,000.00 as moral damages. In arriving at P725,000.00 as actual damages, the trial court added the loss of earning capacity of the victim which it computed to be P660,000.00 and the other expenses incurred by the heirs of the victim as a result of his death.

We agree that the life expectancy formula should be applied. However, the loss of earning capacity should not be based on the net monthly income of the deceased. The proper computation should be based on the gross annual income of the victim minus the necessary and incidental living expenses which the victim would have incurred if he were alive, estimated at 50%[30] of the gross annual income. The prosecution proved through the Certification of Employment and Compensation[31] that the gross annual income (including 13th month pay and bonus) of the deceased is P65,906.00. Deducting from this the estimated necessary and incidental living expenses, the net annual income is P32,953.00. Multiplying this by the computed life expectancy of the victim which is 22 years, the amount of loss of earning capacity should be P724,966.00.

With respect to actual damages, we have consistently ruled that the recovery of actual damages must be premised upon competent proof and best evidence obtainable by the injured party showing the actual expenses incurred in connection with the death, wake or burial of the victim. Courts cannot simply assume that damages are sustained by the injured party, nor can it rely on speculation or guesswork in determining the fact and amount of damages.[32] In this case, of the expenses summarized by the injured party, only the one incurred for funeral services amounting to P25,000.00 is duly evidenced by a receipt.[33] The trial court's award of P1,200.00 for hospital bills, P43,800.00 for funeral services and P20,000.00 for transportation and representation expenses lacks sufficient basis and should be deleted.

In line with *People vs. Suplito*, 314 SCRA 493 (1999), however, temperate damages may be awarded, it appearing that the victim's heirs had suffered pecuniary losses other than the actual damage but the amount thereof cannot be proved with certainty. Taking into consideration the medical and burial services for the victim, an award of P30,000.00 by way of temperate damages should suffice in this regard.

The award of P1,000,000.00 as moral damages should be reduced, bearing in mind that the purpose for making such award is not to enrich the heirs of the victim but to compensate them however inexact for injuries to their feelings. In line with current jurisprudence on moral damages, an award of P50,000.00 is in order.[34] Likewise, based on prevailing case laws P50,000.00 is awarded as indemnity for wrongful death. Attorney's fees of P24,000.00 is also proper.[35]

WHEREFORE above premises considered, the assailed decision of the Regional Trial Court, Branch 88 of Quezon City is hereby **AFFIRMED WITH THE MODIFICATION** that accused-appellants are ordered to pay the heirs of the victim the total sum of P903,966.00, consisting of P50,000 as death indemnity; P724,966 for loss of earning capacity; P25,000 as actual damages; P30,000 as temperate damages; P50,000 as moral damages; and P24,000 for attorney's fees.

Costs against appellants.

SO ORDERED.

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

[1] Rollo, pp. 24-38.

[2] Id. at 7-10.

[3] TSN, November 4, 1993, pp. 5-17.

[4] TSN, April 19, 1994, pp. 5-9.

[5] TSN, December 16, 1993, pp. 6-12.

[6] TSN, January 21, 1994, pp. 12-26.

[7] TSN, August 18, 1994, pp. 8-26.

[8] TSN, February 10, 1995, pp. 5-7.

[9] TSN, July 31, 1995, pp. 3-7.

[10] TSN, August 4, 1995, pp. 7-29.

[11] TSN, October 2, 1995, p. 5.

[12] TSN, October 16, 1995, pp. 3-13.

[13] Rollo, p. 38.

[14] Id. at 65.

[15] This rule provides that where the evidence of the parties in a criminal case is evenly balanced, the constitutional presumption of innocence should tilt the scales in favor of the accused. *People vs. Benemerito*, 264 SCRA 677, 690 (1996), citing *Federico B. Moreno*, *Philippine Law Dictionary* (1991-1992 supplement), 30.

[16] Id. at 58-80.

[17] Id. at 134.

[18] *People vs. Teehankee, Jr.*, 249 SCRA 54, 95 (1995).

- [19] Rollo, p. 29.
- [20] *People vs. Zamora*, 278 SCRA 60, 73 (1997); *People vs. Jagolingay*, 280 SCRA 768, 774 (1997).
- [21] *People vs. Montero, Jr.*, 277 SCRA 194, 206 (1997).
- [22] *People vs. Piandiong*, 268 SCRA 555, 564 (1997).
- [23] *Waterous Drug Corporation vs. NLRC*, 280 SCRA 735, 745 (1997).
- [24] *People vs. Andal*, 279 SCRA 474, 491 (1997).
- [25] Appellants Brief, citing TSN, April 19, 1994, pp. 6-7, Rollo, p. 74.
- [26] *People vs. Dinglasan*, 267 SCRA 26, 43 (1997).
- [27] *People vs. Castro*, 20 SCRA 543, 547 (1967).
- [28] *People vs. Tobias*, 267 SCRA 229, 255 (1997).
- [29] *People vs. Villaruel*, 261 SCRA 386, 397 (1996).
- [30] See *People vs. Nullan*, 305 SCRA 679, 706-707 (1999).
- [31] Exhibit "Q".
- [32] *People vs. Nullan*, 305 SCRA 679, 705 (1999) citing *People vs. Degoma*, 209 SCRA 266 (1992) and *People vs. Fabrigas, Jr.*, 261 SCRA 436 (1996).
- [33] Exhibit "P-3".
- [34] *People vs. Gutierrez, Jr.*, 302 SCRA 643, 668 (1999); *People vs. Verde*, 302 SCRA 690, 706 (1999).
- [35] *People vs. Verde*, 302 SCRA 690, 707 (1999).

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