PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE REAPOR Y SAN JUAN, NORBERTO NANALE Y ESPLANA, JOHN DOE, PETER DOE, RICHARD DOE, RICKY DOE, ALVIN DOE, RONALD DOE, STEVEN ...

G.R. No. 130962. October 05, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated June 2, 1997, of the Regional Trial Court of Naga City, Branch 28, finding appellant Jose Reapor y San Juan guilty of murder, sentencing him to reclusion perpetua, and ordering him together with accused Norberto Nanale y Esplana to pay the surviving heirs of Larry Nivales the amount of P5,320 as actual damages, P50,000 as civil indemnity and P50,000 as moral damages.

The Information against them reads as follows:

> The undersigned Assistant City Prosecutor of Naga City accuses JOSE REAPOR Y SAN JUAN, NORBERTO NANALE Y ESPLANA, JOHN DOE, PETER DOE, RICHARD DOE, RICKY DOE, ALVIN DOE, RONALD DOE, STEVEN DOE, and ARNOLD DOE of the crime of MURDER, committed as follows:
>
> That on or about October 1, 1996, in the city of Naga, Philippines and within the jurisdiction of this Honorable Court, the above named accused conspiring, confederating and mutually helping one another, with treachery, with the aid of armed men and employing means to weaken the defense, did then and there willfully, unlawfully, and feloniously and with intent of taking the life of Larry Nivales, attack the latter in the following manner, that is while some of the armed men were holding the arms of the victim, JOSE REAPOR Y SAN JUAN stabbed him several times with a knife, causing to suffer the following wounds, to wit:
>
> 1. Stab wound located on the right chest wall, above the right nipple penetrating the upper lobe of the right lung.
>
> 2. Superficial incised wound located on the left chest above the left nipple.
>
> 3. Stab wound located on the left side of the chest above left nipple penetrating the upper lobe of the left lung.
>
> 4. Stab wound located on the left chest below nipple penetrating the lower lobe of the left lung.
>
> 5. Stab wound located on the anterior aspect of right leg.
>
> 6. Stab wound on the lateral aspect of the left leg.
>
> as evidence by hereto attached Autopsy Report conducted from the victim, Larry Nivales, said wounds being necessarily mortal, thereby causing his death.
>
> CONTRARY TO LAW
>
> Naga City, October 3, 1996.[2]

On February 17, 1997, Reapor and Nanale were arraigned and they pleaded not guilty.[3] Thereafter, trial on the merits ensued.

For the prosecution, Elsie Carulla and Napoleon Penolio testified as eyewitnesses to the killing of the victim, Larry Nivales.

Elsie Carulla testified that after watching a dance at the Mac Mariano Elementary School, she saw Larry Nivales on the night he was killed. According to her, she saw Jose Reapor stab Nivales once on the chest, while the victim was being held by three persons. After being wounded by Reapor, Nivales was then stabbed by Norberto Nanale, also on the chest.[4]

Napoleon Penolio testified that at around 1:20 A.M., on October 1, 1996, he was on his way to the house of Moises Nivales to borrow some tools when he saw the latter's son, Larry, being held by three persons at the intersection in front of the Mac Mariano Elementary School. While he was being held, Jose Reapor approached Larry and stabbed him once on the chest. After Reapor was done, Norberto Nanale came and stabbed Larry also on the chest.[5]

Dr. Joel Jurado testified that he was the one who conducted an autopsy upon the body of Larry Nivales. He reported that the victim suffered six stab wounds, four of which were inflicted on the chest area while two were on the legs of the victim. Dr. Jurado declared that of these stab wounds, three were fatal[6] while the rest were merely superficial.[7] The cause of death was due to loss of blood because of multiple stab wounds.[8]

Nancy Dumalasa Nivales, the mother of the victim, testified on the expenses and damages she and her family incurred as a result of her son's death.[9]

SPO4 Leonardo Rañola stated that he was the Station Commander of Sub-station No. 2 at Peñafrancia Avenue, Naga City. On October 1, 1996, Nancy Nivales, mother of the victim, went to their office with two persons whom he remembered to be Tomines and Amaro. They reported that Mrs. Nivales' son was stabbed and the assailants, whom they identified to be appellants Jose Reapor and Norberto Nanale, were still at large. SPO4 Rañola accompanied Mrs. Nivales and her companion to the houses of Jose Reapor and Norberto Nanale. The latter were brought to the police headquarters for investigation.[10]

The defense presented Raul Rosales, an elected barangay kagawad of Barangay Balatas, Naga City. He testified that there was no dance held inside the compound of Mac Mariano Elementary School during the evening of September 30, 1996. The only dance that night was held along Molave St., which is 100 meters from the said school.[11]

Norberto Nanale denied stabbing Larry Nivales or knowing Jose Reapor prior to October 1, 1996. He alleged that he was at home from 9:00 P.M. of September 30, 1996 until 6:00 A.M. the following morning.[12]

Jesus Almiro, who testified for the defense, said that there was no dance inside the Mac Mariano Elementary School in the evening of September 30, 1996. Later, however, he declared that he was not absolutely certain that there was no dance inside the school after 7:30 P.M.. He said he was already home by this time and could not see what was going on inside the school compound.[13]

Jose Reapor testified that he was at his brother's residence during the night of the killing. He denied the accusation against him.[14]

Eduviges Evangelista Reapor testified that she is the sister-in-law of appellant and that the latter was with them in their house at Zone 6, Balatas, Naga City in the evening of September 30, 1996 until the following morning.[15]

On June 2, 1997, the trial court rendered judgment finding the accused guilty of the crime of murder. The

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dispositive portion of said decision reads:

> WHEREFORE, in view of all the foregoing findings that the guilt of accused Jose Reapor y San Juan and Norberto Nanale y Esplana of the crime of murder of which they are presently charged has been proven beyond reasonable doubt, judgment is hereby rendered whereby accused Jose Reapor y San Juan, in the absence of any mitigating or aggravating circumstance, is hereby sentenced to suffer the penalty of reclusion perpetua. Accused Norberto Nanale who was fifteen (15) years old when the crime of which he is presently charged was committed, and therefore entitled to the privilege mitigating circumstance of minority and applying the Indeterminate Sentence Law, is hereby sentence to suffer the penalty of imprisonment of SIX (6) Years and ONE (1) Day to TWELVE (12) years of prision mayor; ordering both accused to pay the surviving heirs of the deceased, Larry Nivales the amount of FIVE THOUSAND THREE HUNDRED TWENTY (P5,320.00) PESOS representing actual damages for expenses incurred in connection with the death of Larry Nivales; FIFTY THOUSAND (P50,000.00) PESOS for the death of Larry Nivales; and FIFTY THOUSAND (P50,000.00) PESOS for moral damages. With costs de oficio.
>
> SO ORDERED.

Jose Reapor appealed. The verdict against Norberto Nanale became final and executory, since he did not appeal.

Before us, appellant Jose Reapor raises the lone assignment of error that:

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT AND EVENTUALLY ORDERING HIM TO PAY THE SURVIVING HEIRS OF THE VICTIM ACTUAL AND MORAL DAMAGES

Appellant seeks to discredit the credibility of the two eyewitnesses who testified for the prosecution. He points out certain "improbabilities" and "inconsistencies" in their testimonies which, according to the appellant, point to the conclusion that these witnesses had been rehearsed or paid.

According to him, Elsie Carulla's testimony that she saw the stabbing incident after she watched a dance held "inside" the Mac Mariano Elementary School is false. He insists that there was no such dance. Raul Rosales and Jesus Almiro attested that no such event took place inside the school. Appellant likewise questions Elsie Carulla's identification of him as one of the offenders. He points out that she could not categorically identify who the offender was since she admitted that she reported for work at 8:00 A.M. and went home at 8:00 in the evening. According to appellant, he lived at Zone 6, Barangay Balatas, Naga City, about two (2) kilometers from the place of the incident. Appellant says that in making identifications of the accused, Elsie Carulla was aided by somebody.[16] He adds that upon witnessing a person being attacked, the natural reaction of a woman is fright, and fear would prevent her from correctly identifying the attackers.

Appellant also contends that the testimony of Napoleon Penolio was contrary to human experience and unworthy of belief. The natural and spontaneous reaction of one who witnessed the stabbing, according to appellant, would be to immediately go to the house of the victim, whom Penolio considered a friend, to report the incident. But Penolio waited until the afternoon of October 1, 1996. This delay, says the appellant, strongly suggests that Penolio did not really see the crime as it unfolded. Appellant adds that Penolio could not have identified him as one of those who attacked Larry Nivales since a frightened witness could not possibly have identified anyone. Appellant suggests that Penolio was prompted by the victim's relative[17] to point to him as the assailant.

For the State, the Office of the Solicitor General (OSG) urges that the testimonies of the prosecution witnesses should be upheld and afforded full faith and credence and the judgment of the trial court affirmed. However, the OSG recommends that the maximum of Norberto Nanale's indeterminate sentence be corrected from "twelve years (12) of prision mayor" to "fourteen (14) years, eight (8) months and one (1) day of reclusion temporal". It

also recommends that the award of P50,000 as civil indemnity by the trial court be increased[18] to P75,000 pursuant to this Court's ruling in People vs. Victor, 292 SCRA 186 (1998).

After carefully considering the records and the submissions of the parties, we find Jose Reapor's appeal unmeritorious. Appellant asserts that Carulla's testimony should not be believed, because while a dance was indeed held in the vicinity of the crime scene, it was held along Molave Street in Mac Mariano Village Subdivision and not inside the compound of the Mac Mariano Elementary School as claimed by eyewitness Carulla. However, while defense witness Jesus Almiro was not absolutely sure whether there was a dance party inside the Mac Mariano Elementary School after 7:30 P.M. of September 30, 1996,[19] another defense witness Raul Rosales' testified that there was a dance along Molave Street which took place from 10:00 P.M. of September 30, 1996 until 2:00 A.M. in the morning of October 1, 1996.[20]

Whether there was a dance inside or outside the compound of Mac Mariano School is not crucial on this issue. Everyone is agreed that there was a killing and it happened outside the school premises. The dance was only a time-and-place reference used by Carulla. Carulla's identification of the accused is not belied by the fact of whether the dance was inside or outside the school premises. Suffice it to state that there was indeed a dance party held in that vicinity at about the time and date of the killing.

Appellant likewise points out that Carulla could not have possibly identified him since she hardly knew him, and that she said she worked from 8:00 A.M. to 8:00 P.M., and she therefore had no opportunity to see him prior to the killing of Larry Nivales.

A close review of the records would show, however, that nothing in the testimony of Carulla negates the possibility of her seeing appellant in other places, such as in the basketball court earlier. Neither law nor jurisprudence requires, as a condition sine qua non, that for a positive identification to be made by a prosecution witness of a felon, the witness must first know the latter personally.[21]

It has also been observed that people who are confronted with a shocking and unexpected event have different reactions. It is not always that they are shocked into numbness. Some in fact have heightened awareness during such events. Thus, as to witness Napoleon Penolio's reaction to the killing, such reaction does not render his testimony incredible. Not every witness is expected to act with reason and conformably with the expectations of mankind.[22] Different people react in different ways especially when faced with an extraordinary and disturbing event. In Penolio's case, his delayed reporting of what happened that day could be explained by fear, he was simply frightened.[23]

Absent any showing that the trial court had overlooked some important and vital fact which would lead to a different view of the outcome of the case, we find no reason to disturb the trial court's findings of fact and assessment of the credibility of the witnesses and their testimony.[24] We differ, however, in its appreciation of the aggravating circumstance in this case. The trial court found that there was treachery when Reapor and Nanale attacked the victim while three men held him immobile, thus affording the victim no means of defense. Treachery, however, cannot be presumed but must be proved by clear and convincing evidence as conclusively as the killing itself.[25] In this case, the prosecution did not prove treachery convincingly. The fact that the victim was held by unidentified men when he was stabbed by Reapor and Nanale is not enough to establish treachery. Two conditions must concur to establish treachery: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (2) the means of execution was deliberately or consciously adopted.[26] In our view the second requirement has not been shown. The prosecution merely established that the victim was stabbed while he was being held by three persons. It did not present any evidence to show how the aggression commenced. Absent any particulars as to the manner in which the aggression commenced or how the

act which culminated in the death of the victim began and developed, treachery cannot be appreciated to qualify the killing to murder.[27] In People vs. Agapinay, 186 SCRA 812 (1990), we held that the victim held by two persons while he was stabbed by a third does not demonstrate treachery. In People vs. Daen, Jr., 244 SCRA 382 (1995), the victim was surrounded by appellant and five others, one of whom had pinned down the victim's hands. In those cases, the prosecution failed to show that the manner of execution was deliberately chosen and designed. Treachery was ruled out.

In both Agapinay and the Daen, we held that there was abuse of superior strength qualifying the killing to murder. But in said cases, abuse of superior strength was alleged in the Information. Here no such allegation was made. Under Secs. 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, as amended, qualifying as well as mitigating circumstances must be alleged expressly:

> SEC. 8. Designation of the offense.- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
>
> SEC. 9. Cause of accusation.-The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Conformably to this new amendment, there being no allegation of treachery nor abuse of superior strength, in the Information, they could not be taken into account. The crime committed in the present case is only homicide, not murder.

Further, we are unable to agree with the trial court's finding that Nanale and Reapor conspired to kill Nivales. Said the trial court:

> ... the evidence adduced by the prosecution show only conspiracy between the two accused by their concert of action and community of interest, but not with respect to the others... (judgment, 3rd par., p. 9).

The prosecution evidence, however, showed that appellant Reapor stabbed Nivales and after such stabbing, Reapor left. It was after he left that Nanale came and also stabbed the victim.[28] The attacks were not simultaneous. Nor was there any showing that these attacks were done for a common purpose. The conclusion that the two conspired was based on nothing more than conjectures. But the rule is well established that conspiracy must be shown as clearly and as convincingly as the commission of the crime itself.[29] Here, we find no positive and conclusive evidence shown as proof of conspiracy.[30]

The acts of the two felons before and after the crime were committed by each of them separately and singly. One stabbed Nivales after the other had done so. Appellant Reapor had left without waiting for accused Nanale. The sequence of events shows that appellant acted alone. That Nanale did not talk to appellant nor prevent him from leaving also indicate that he acted on his own. There being no conspiracy, each felon should be held liable only for his individual acts.

The prosecution witnesses testified that Reapor stabbed the victim only once, and then left. He was followed by accused Nanale who also stabbed the victim once. Each assailant contributed separately to the fatal wounding of the victim. Appellant stabbed the victim on the chest, a vulnerable part of the body. It is not without reason that the trial court held appellant liable for the death of Larry Nivales. Appellant and co-accused Nanale are without doubt guilty of homicide.

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As to accused Nanale, the OSG recommends that the penalty imposed on him be modified. Although Nanale did not appeal the decision, thereby accepting the verdict of guilt, Sec. 11 (a) of Rule 122 of the Rules of Court states:

Sec. 11. Effect of appeal by any of several accused. -

> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Accordingly, the penalty imposed by the trial court on Nanale could be modified, so that like appellant, Nanale should be declared guilty not of murder but only homicide. For as we now find, the offense committed by Nanale as well as appellant was not attended by the qualifying circumstance of treachery.

Finally, the OSG recommends that the civil indemnity be increased to P75,000. However, the indemnity of P75,000 only applies in a qualified rape case, as in People vs. Victor,[31] cited by the OSG. For the violent and shocking death of the victim here, we find that the award of P50,000 as civil indemnity is justified. This together with the actual damages of P5,320 and moral damages in the amount of P50,000 should be maintained.

WHEREFORE, the judgment of the Regional Trial Court of Naga City, Branch 28, is hereby MODIFIED. Appellant Jose Reapor y San Juan, as well as his co-accused Norberto Nanale, is declared guilty only of homicide, which is punishable with the penalty of reclusion temporal. Applying the Indeterminate Sentence Law, and considering that there is no aggravating nor mitigating circumstance in the commission of the offense by appellant, the penalty that is hereby imposed on appellant is six (6) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. As for co-accused Norberto Nanale, considering the mitigating circumstance that he was a minor at the time he committed the crime of homicide, and applying the Indeterminate Sentence Law, his sentence is reduced to six (6) months and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. The award of P50,000 as civil indemnity, P5,320 as actual damages, and P50,000 as moral damages in favor of the victim's heirs is AFFIRMED.

SO ORDERED.

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

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[1] Rollo, pp. 22-32.

[2] Rollo, p. 5.

[3] Records, pp. 42-44.

[4] TSN, April 4, 1997, pp. 5-6.

[5] TSN, April 22, 1997, pp. 13-16.

[6] Stab wound located on the right chest wall, above the right nipple; stab wound located on the left side of the chest above the left nipple; stab wound located on the left chest below the left nipple.

[7] Superficial incised wound located on the left chest above the left nipple; stab wound measuring 2x1x2cm located on the lateral aspect of right leg; stab wound 2x1x2cm located on the lateral aspect of the left leg.

[8] TSN, April 3, 1997, pp. 2-7.

[9] Id. at 10, 16-19.

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[10] TSN, April 4, 1997, pp. 24 and 27.

[11] TSN, April 28, 1997, pp. 5-6.

[12] Id. at 13-14.

[13] TSN, May 15, 1997, pp. 3-9.

[14] Id. at 11-14.

[15] TSN, May 16, 1997, pp. 29-32.

[16] Rollo p. 63.

[17] Id. at 65-66.

[18] Id. at 103.

[19] TSN, May 15, 1997, p.8.

[20] TSN, April 28, 1997, p. 5.

[21] People vs. Bracamonte, 257 SCRA 380, 381 (1996).

[22] People vs. Erardo, 277 SCRA 643, 654 (1997).

[23] TSN, April 22, 1997, p. 26.

[24] People vs. Landicho, 258 SCRA 1, 32 (1996).

[25] People vs. De Leon, 262 SCRA 445, 450 (1996).

[26] People vs. Valles, 267 SCRA 103, 113 (1997).

[27] People vs. Cruz, 262 SCRA 237, 243 (1996). See also, People vs. Nalangan, 270 SCRA 234, 240 (1997); People vs. Naguita, 313 SCRA 292, 308 (1999).

[28] TSN, April 4, 1997, p. 6; April 22, 1997, p. 16.

[29] Pecho vs. People, 262 SCRA 518, 530 (1996).

[30] People vs. Berroya, 283 SCRA 111, 129 (1997).

[31] 292 SCRA 186 (1998).

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