

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO CABACAN, ACCUSED-APPELLANT.

G.R. No. 130965. August 22, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision rendered on June 19, 1997, by the Regional Trial Court of Tarlac, Tarlac, Branch 65, in Criminal Case No. 8753, finding appellant Restituto Cabacan y Mendoza guilty of murder. In said decision the trial court decreed:

WHEREFORE, the Court finds the accused Restituto Cabacan y Mendoza GUILTY beyond reasonable doubt of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended, and there being no aggravating circumstance or in mitigation thereof, he is hereby sentenced to suffer the penalty of reclusion perpetua, with the accessory penalty of the law, and to pay the heirs of Nestor Vibas the amount of P50,000.00 as death indemnity; the sum of P25,000.00 as actual damages and to pay the costs.

SO ORDERED.[1]

The information against him alleged:

That on or about January 14, 1995 at around 8:00 o'clock in the evening at Barangay Capehan, Municipality of Tarlac, Province of Tarlac, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to take the life of Nestor Vibas did then and there willfully, unlawfully, feloniously, suddenly, unexpectedly and treacherously attack, assault and stab his victim thereby causing injuries which resulted in death.

Contrary to law.[2]

Upon arraignment, Cabacan entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution evidence is summarized by the trial court as follows:

x x x

... it appears that at about 5:00 o'clock in the afternoon of January 14, 1995, the victim, Nestor Vibas, was invited by his friend, Romeo Lundang, to a drinking session with ten (10) other guests, at their house located at Sitio Camelot Stable, Barangay San Miguel, Tarlac, Tarlac. At about 6:30 o'clock in the evening of that same day, Restituto Cabacan and Edmundo Corpuz, a friend and a neighbor of Romeo, respectively, were also invited by the latter to have a drink with them in their house. Sometime later, however, at the height of the drinking session, an altercation between Restituto Cabacan and Nestor Vibas started. As a result, Vibas gave Cabacan a fist blow hitting him on the face. Romeo and his other guests pacified him. Romeo then brought Nestor Vibas to their house about four hundred meters away, while Restituto Cabacan was left behind.

Before leaving Nestor's house, Romeo told his wife, Susana, that her husband had a quarrel with Restituto, the accused herein, during a drinking session at their house earlier. Despite her advice that he stay inside their

house and rest, Nestor, however, opted to stay outside and seated himself along the road in front of their house with his back towards the street about twenty (20) paces away from the place where his wife, Susana, was watching a game of chance (TSN, August 10, 1995, p. 6). Some thirty (30) minutes later, at about 8:00 p.m. that evening Susana heard her husband shout as if he was given a karate blow. She rushed towards her husband and saw Restituto Cabacan, from a distance at about four (4) paces away, making a thrust at the back of her husband which caused the latter to fall down on the ground (TSN, August 10, 1995, p. 10). Susana, who had seen what Restituto did to her husband but not being aware that he had stabbed him, shouted at Restituto, thus: "You, son of a bitch. You had already boxed him and still you had to push him". Restituto ignored her, rode his bicycle and immediately pedalled away.

Susana then held her husband by the waist to help him get up but she noticed blood oozing from his side. She then shouted for succor and Nestor's uncle, Carlos Tunday, responded with some of their neighbors and rushed Nestor to the St. Martin de Porres Hospital at Central Azucarera de Tarlac in San Miguel, Tarlac, Tarlac. Later, Nestor was transferred to the Tarlac Provincial Hospital but he died on the way. Susana testified that although it was already nighttime, she recognized Restituto as the assailant of her husband because there was a light about ten (10) paces away from the place where accused stabbed her husband. Susana stated that accused was also familiar to her because he used to stay at the house of the brother of her husband sometime ago and that the accused has a defect in one of his feet (TSN, Dec. 19, 1995, p. 4).[3]

Dr. Allan Vengco, a resident doctor at Tarlac Provincial Hospital, testified that the victim was brought to the hospital at around 8:45 P.M. of January 14, 1995, with a "2-3 centimeter stellated stab wound found at the level of 6th ICS left midscapular area" and the victim was already dead on arrival at the hospital. He said that the victim died due to pneumothorax which caused the abnormal collection of air blood in the area.

Dr. Reynaldo Patriarca, the physician who conducted an autopsy on the victim's cadaver, testified that he found the cadaver already in rigor mortis. According to him, the victim sustained only one wound at the back, left lower part of the scapular area. He concluded that the cause of death of the victim was traumatic shock, internal and external hemorrhages due to stab wound.[4]

PO3 Renato Tiglao, who was then on duty at the Kababayan Center No. 7 police station in San Miguel, Tarlac, received a report from Barangay Captain Salome Beting on the night of January 14, 1995, about a stabbing incident in Sitio Camelot Stable. He immediately went to the crime scene and conducted an investigation. He learned that Restituto Cabacan had stabbed Nestor Vibas and that the accused had boarded a vehicle bound for the north. PO2 Arsenio Presto and he proceeded to the Philippine Rabbit Bus and Dagupan Bus stations in Tarlac but failed to locate him. At around 11:00 P.M. that night, Barangay Captain Dick Reyes informed him that he had apprehended appellant. Reyes further informed PO3 Tiglao that appellant turned over the bladed weapon used in stabbing the victim to Cabacan's mother for safekeeping. Appellant's mother subsequently surrendered the weapon voluntarily to PO3 Tiglao when he and SPO3 Arsenio Presto went to the house of the accused and inquired about the knife.[5]

Appellant maintained his innocence. He told a different version of the incident, as follows:

...According to him, at about 6:00 p.m. of January 14, 1995, he and his friend, Edmundo Corpuz, were then drinking gin in the house of the latter. At about 6:30 p.m., he and Edmundo Corpuz went to the house of Romeo Lundang. When they reached the place, he saw several persons already drinking gin and they invited them to buy more gin. When the person who was asked to buy liquor had left, Nestor Vibas likewise asked someone to buy four (4) more bottles of gin. When Restituto prevented Nestor from buying some more, the latter got mad and boxed him. He did not retaliate because "they were many" (TSN, February 18, 1997, p. 4). They were pacified by Romeo Lundang and the latter brought Nestor later to his house. Shortly thereafter, Restituto Cabacan went with Edmundo Corpuz to the latter's house at Camelot Stable and changed his T-shirt which had some blood stains and wore another T-shirt. On his way home, he averred, he took the road passing

by the house of the victim at Camelot Stable although it was not the route in going to their place. Upon nearing the house of Nestor, he noticed the victim on the street. He alighted from his bicycle when he was about ten (10) meters away from Nestor (TSN, February 18, 1997, p. 12). The victim then approached accused and again attacked and subjected him to fist blows. Restituto was not able to retaliate because Vibas was bigger than he. When he saw people were coming to where they were, accused declared he quickly rode his bicycle and departed from the scene (TSN, February 18, 1997, pp. 5-6). He insisted the victim assaulted him because he prevented him from buying four (4) more bottles of gin.[6]

After trial, the court found the testimonies of prosecution witnesses credible. It disbelieved the testimony of the appellant and, accordingly, found him guilty as charged.

Appellant seasonably filed his notice of appeal. He now assigns the following errors:

I

THE TRIAL COURT ERRED IN DECLARING THAT TREACHERY ATTENDED THE KILLING OF THE VICTIM.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[7]

The main issue for resolution is whether the qualifying circumstance of treachery has been proved beyond reasonable doubt. Its resolution, however, hinges on the credibility of witnesses for the prosecution.

Susana Vibas,[8] the victim's wife, positively identified appellant as the person whom she saw stab her husband. She stated that at the time of the incident, she was watching a game of chance near their house. From where she was, she could see her husband resting on the roadside in front of their house with his back towards the street. Her husband was about twenty paces away. Suddenly, she heard her husband shout and so she rushed towards him.

While she was about four meters away, according to her testimony accepted by the trial court, she saw appellant making a thrusting motion at her husband's back. Upon seeing her husband fall to the ground, she berated appellant thus, "Son of a bitch, you had already boxed him and still you had to push him." Apparently, she had not yet realized that her husband had been stabbed. Appellant just ignored her and quickly took off on his bicycle. Susana held her husband by his waist to help him get up. It was then that she noticed blood oozing from his side. She immediately sought help and brought her husband to the hospital.

From Susana's testimony, the trial court was convinced that it was appellant who killed the victim. He was the only person Susana saw with her husband at that time and whom she saw making a thrust at her husband's back before he fell to the ground. Susana readily recognized appellant because the place was illuminated. She could not have erred in her identification of appellant for she knew him personally since the latter stayed in the house of her brother-in-law for sometime. His defective foot also made it easier for her to identify him. While she did not actually see the bladed weapon used, the weapon was turned over to the police by no less than appellant's mother. Furthermore, Dr. Patriarca's medical findings supported Susana's testimony that the victim sustained only one stab wound at the left side of the back.

Appellant in his defense merely denied the accusation against him. He insists that after eating, he went home on his bicycle. As he approached the victim's house, he saw the victim along the road and so he alighted from his bicycle. When the victim saw him, the latter without provocation attacked him again with fist blows. Appellant stated that he was not able to retaliate because the victim was bigger. As he noticed several persons approaching, he immediately took off in his bicycle and sped away.

After a careful review of the record, especially the testimonies of the prosecution and defense witnesses, we are in agreement with the trial court that appellant's version of the incident is far from credible. Appellant wants us to believe that another person stabbed the victim. But as the trial court observed, to believe appellant's story is to tax one's credulity. Nobody else was implicated as a possible suspect. We note appellant's claim that it was the victim who mauled him. Yet, he hurriedly left on his bicycle, according to him, when people were approaching the scene. If his claim that he was the one being attacked was true, there was no need for him to flee. Flight is indicative of guilt. Thus, between the widow's positive assertions and appellant's negative averments on details of the incident, the former deserves more credence. Based on the evidence including testimonies on record, we are of the view that the trial court did not err in concluding that appellant was responsible for the killing of the victim, Nestor Vibas.

However, we find that the trial court erred in its conclusion that the killing of Vibas was qualified by treachery. In order that treachery may be considered as an aggravating circumstance, there must be proof that the accused has consciously adopted a mode of attack to facilitate the perpetration of the killing without risk to himself.[9] In the case at bar, the Solicitor General noted that about an hour before the stabbing, the victim and appellant had an altercation which led the former to box the latter in his face. Appellant's anger must have placed the victim on guard against possible retaliation from appellant. Appellant retaliated by stabbing the victim when he chanced upon the latter sitting alone by the roadside. In our view, treachery cannot be appreciated in this case where appellant could have stabbed the victim by way of a rash and impetuous impulse rather than from a deliberate act of the will,[10] even though the victim was stabbed from behind. Moreover, the victim was already aware of appellant's hostile attitude towards him even before the attack, hence, he was already forewarned of impending danger to his life.[11] The rule that a sudden attack by the assailant constitutes treachery, whether frontally or from behind, does not apply where the attack was not preconceived and deliberately adopted but was first triggered evidently by a sudden anger of the accused.[12]

Since the qualifying circumstance of treachery was not proved, in our view, the crime committed by appellant is not murder but only homicide. Under Article 249 of the Revised Penal Code, the applicable penalty for homicide is only reclusion temporal. As there is neither aggravating nor mitigating circumstance found by the trial court or shown after a review of the records, the penalty in this case shall be fixed at reclusion temporal in its medium period, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Further applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of prision mayor as a minimum to reclusion temporal in its medium period as the maximum. The range of prision mayor is from 6 years and 1 day to 12 years. The span of reclusion temporal, medium, is from 14 years, 8 months and 1 day to 17 years and 4 months. In addition to civil indemnity and actual damages, awarded by the trial court, the heirs of the victim are also entitled to P50,000 as moral damages without need of further proof, pursuant to current jurisprudence.

WHEREFORE, the assailed DECISION of the Regional Trial Court of Tarlac, Tarlac, Branch 65, in Criminal Case No. 8753, is MODIFIED. Appellant RESTITUTO CABACAN is found GUILTY of HOMICIDE, not murder. He is hereby sentenced to suffer a prison term of 10 years of prision mayor in its medium period, as minimum, to 17 years and 4 months of reclusion temporal in its medium period, as maximum, with accessory penalties provided by law, and to pay the heirs of the deceased Nestor Vibas the amounts of P50,000 as civil indemnity, another P50,000 as moral damages, and P25,000 as actual damages. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Acting C.J., (Chairman), Mendoza, and Corona, JJ., concur.

[1] Rollo, p. 23.

[2] Id. at 5.

[3] Id. at 17-19.

[4] TSN, January 7, 1997, p. 6; TSN, January 4, 1996, p. 3.

[5] TSN, August 29, 1996, p. 3.

[6] Rollo, p. 20

[7] Id. at 50.

[8] In her Sinumpaang Salaysay dated January 15, 1994, she signed as Mrs. Susana Vivas. See Records, p. 5.

[9] People vs. Quitlong, G.R. No. 121562, 292 SCRA 360, 382 (1998).

[10] See People vs. Navarro, G.R. No. 125538, 295 SCRA 139, 146 (1998).

[11] See People vs. Rivera, G.R. No. 101798, 221 SCRA 647 (1993).

[12] People vs. Academia, Jr., G.R. No. 129251, 307 SCRA 229, 234 (1999).

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