PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN VILLARMOSA, ANTHONY EBIDO, AND MARCELINO EBIDO, ACCUSED-APPELLANTS.

G.R. No. 131841. October 23, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated September 15, 1997, of the Regional Trial Court of Pili, Camarines Sur, Branch 33, finding the appellants Ruben Villarmosa, Anthony Ebido and Marcelino Ebido guilty of murder and sentencing each to suffer the penalty of reclusion perpetua and to jointly and severally pay the heirs of Dioscoro Oasnon the sum of P91,875 and to pay the costs.

Appellants were charged in an Information which reads:

> That, on or about 8:30 o'clock in the evening of July 12, 1995, in Zone 6, Brgy. Cadlan, Pili, Camarines Sur and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, by means of treachery and evident premeditation, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault, stab with a fan knife and hack with a bolo a certain DIOSCORO OASNON, thereby inflicting upon the latter multiple fatal wounds which caused his instantaneous death, to the damage and prejudice of the heirs of said victim.
>
> ACTS CONTRARY TO LAW.[2]

Upon arraignment, all the appellants pleaded not guilty.

During the trial, Rodrigo Oronan, Dr. Thomas Gonzales, Wenifreda Oasnon and Vicente Nebiar testified for the prosecution.

RODRIGO ORONAN testified that on July 12, 1995 at around 8:30 P.M., he went to the store of Ricardo San Buenaventura to buy cigarettes. He was with the victim, Dioscoro Oasnon.[3] Suddenly, Ruben Villarmosa stabbed Dioscoro with a balisong (fan knife) at the right side of the waist and back. Anthony Ebido followed by hacking the victim at the upper back of the head. Rodrigo also saw Marcelino Ebido hit Dioscoro with an iron pipe at the right side of the latter's neck.[4] Frightened, Rodrigo said he ran away and hid himself in the banana plantation nearby. He then went to Munding Oasnon, Josephine Oasnon and Romeo Arnante to seek assistance. They all went back to the store where they found Dioscoro already dead.[5]

DR. THOMAS S. GONZALES identified Dioscoro's body, and explained his autopsy report with the following findings:

HEAD: 1. Abrasions - 5 x 15 cms., longitudinally on the forehead above the lateral portion of supraciliary arch, left; intervened by two (2) incised wounds, 1 cm. each, between the longitudinal abrasion and the supraciliary arch, also on the left side;

2. Hacking wounds - three (3) : a) 8.75 cms; b) 7.2 cms.; c) 3 cms., all are diagonally upwards from lateral to medial at the occipital region; likewise all involved the scalp, except for letter (b) which involved the skull bone;[6]

He said the cause of death was shock secondary to internal and external hemorrhages sustained from stab and hacking wounds.[7]

WENIFREDA OASNON, widow of the victim, testified on the expenses she incurred on the death of her husband. She spent P21,000 for the wake, P10,000 for funeral services, P3,000 for rental of vehicles, P400.00 for mass donations and offerings and P250 for rental of nitches.[8] She also testified that her husband earned P195 per day as a contract laborer.[9]

VICENTE NEBIAR testified that he was in the house of Ricardo San Buenaventura on July 12, 1995, at around 8:30 P.M. with Anthony Ebido and Ruben Villarmosa having a drinking spree.[10] Marcelino Ebido was also there but stayed outside the store.[11] While they were drinking, Anthony[12] and Ruben suddenly stood up and left. After two minutes, he heard a girl shout "NATUMBA NA SI PAY CORO" (Uncle Coro had fallen).[13] Thereafter, Vicente rushed out and saw Dioscoro already lying on the ground.[14] He approached Dioscoro and felt the injury on his head. He rushed to seek the assistance from the army station.[15] When he returned with three army men, Dioscoro was already dead. They went to the police station and brought the body of Dioscoro to Sta. Cruz Memorial funeral parlor.[16]

Appellants Ruben Villarmosa and Anthony Ebido claimed self-defense, while appellant Marcelino Ebido denied the charges. They all testified for the defense. The version of the defense is as follows:

On the night of July 12, 1995, RUBEN VILLARMOSA and ANTHONY EBIDO decided to go to the store of Ricardo San Buenaventura to purchase several necessities on credit. There, they decided to stay and drink gin while watching T.V.. Suddenly, two masked men[17] arrived with flashlights and guns. One of the masked men approached Ruben and pointed his flashlight and revolver at Ruben's face. The masked man,[18] later identified as the victim Dioscoro Oasnon, pulled the trigger but the gun failed to fire. This gave Ruben the opportunity to pull out his bolo.[19] At the same time, Anthony got a crow bar and started hitting the masked man in the head.[20] After the victim fell, Ruben picked up the flashlight and the gun and fired at the victim's companion but missed. Ruben identified the other masked man as Rodrigo Oronan, one of the prosecution witnesses.[21] Ruben and Anthony then went home and fetched Marcelino Ebido to flee towards Bgy. Carolina. They were eventually apprehended by the authorities three days after the incident. Anthony was captured in Bgy. Carolina while Marcelino and Ruben were arrested in Naga City.[22]

On September 15, 1997, the trial court rendered its decision, disposing as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the three (3) accused, RUBEN VILLARMOSA, ANTHONY EBIDO and MARCELINO EBIDO, guilty beyond reasonable doubt of the offense of MURDER as defined and penalized by Article 248 of the Revised Penal Code as amended by RA No. 7659 and are hereby imposed the penalty of RECLUSION PERPETUA.
>
> As civil liability, they are further directed jointly and severally to pay the sum of NINETY-ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE PESOS (P91,875.00) Philippines (sic) currency, to the heirs of the late Dioscoro Oasnon represented by his widow Wenifreda Oasnon, but without subsidiary imprisonment in case of insolvency with costs against accused.
>
> SO ORDERED.[23]

Aggrieved, appellants interposed this appeal alleging that the trial court erred in:

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- . . . INCLUDING MARCELINO EBIDO AS ONE OF THE THREE ACCUSED FOR THE CRIME OF MURDER DESPITE HIS PRESENCE (SIC) IN THE SCENE OF THE CRIME

- . . . . FINDING THE THREE ACCUSED GUILTY OF THE CRIME OF MURDER DESPITE THE FACT THAT TREACHERY AND EVIDENT PREMEDITATION WERE NOT AT ALL IN ATTENDANCE.

The two issues pertain to the credibility of the witnesses and the attendance of any qualifying circumstance in the killing of Dioscoro Oasnon.

Appellants Ruben Villarmosa and Anthony Ebido argue that they killed Dioscoro as an act of self-defense. They contend that they were attacked first and that they had no option but to retaliate to save themselves. Marcelino, on the other hand, deny any participation in the said killing. His co-appellants testify that he was left behind in their hut and was not in the scene of the crime.

For the State, the Office of the Solicitor General (OSG) contends that the positive identification by the prosecution witnesses, particularly Rodrigo Oronan, deserves to be given credence above the self-serving assertions of appellants. The OSG argues that the manner by which the attack on Dioscoro was perpetrated clearly shows that there was alevosia or treachery. The attack was sudden and unexpected and did not afford the victim any opportunity to protect himself. The execution of the attack also shows that appellants were prepared to attack the victim.[24]

After a careful review of the records, we are in agreement with the trial court that the testimonies of the prosecution witnesses are more credible than those of the defense witnesses which were full of inconsistencies and improbabilities. First, according to appellant Ruben Villarmosa, the gun of Dioscoro Oasnon failed. Dioscoro fired at him. However, in the same breath, Ruben testified that Oasnon used the same gun to fire at Rodrigo Oronan.[25] Secondly, Ruben insisted that he used a bolo in stabbing and hacking Dioscoro. He did not mention any other weapon. However, co-accused Anthony Ebido, testified that Ruben also used a balisong which he held in his right hand while he held a bolo in his left hand.[26] Third, Ruben testified that before the incident, Anthony and he were warned by Marcelino that they would be attacked by Dioscoro.[27] However, both Marcelino and Anthony Ebido mentioned no such warning. The autopsy report by the prosecution witness, Dr. Thomas Gonzales, shows that Dioscoro suffered several abrasions, hacking and stab wounds in several parts of the body and the head, indicating that he had been attacked savagely. The number, nature, and location of these wounds suffered by the victim belie the self-defense theory of the appellants. Further, the defense claims that the provocation came from the victim who attacked the appellants with a gun. However, appellants did not present a gun during the trial to bolster their case. On the witness stand, the widow of Dioscoro vehemently denied that her husband ever possessed a gun, much less owned one.[28]

Marcelino Ebido claimed that he had no participation in the commission of the crime. However, the testimonies of prosecution witness Rodrigo Oronan and Vicente Nebiar showed otherwise. Rodrigo positively identified Marcelino as one of Dioscoro's attackers,[29] while Vicente categorically stated that Marcelino was present at the crime scene with co-accused Ruben and Anthony.[30] Both Rodrigo and Vicente testified in a straightforward manner. Their positive declarations certainly outweigh the bare-faced and self-serving denials of appellants.

Lastly, we note that the appellants fled rather than surrender voluntarily and promptly. This fact belies their innocence and hints at their culpability. As has often been repeated, flight is a strong indication of guilt.[31]

As found by the trial court, the killing of Dioscoro Oasnon was attended by the qualifying circumstance of treachery. We are in agreement. There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[32] The attack

was deliberate and without warning - done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[33] As told by Rodrigo Oronan on the witness stand, the stabbing spree was sudden and unexpected. The victim had no inkling they were going to be attacked. They were on their way to the house of a friend and only stopped by to purchase some cigarettes.[34] That the attack was done swiftly and calculatingly can be inferred from the fact that it took more or less just two minutes from the time Ruben and Anthony stood up to attack Dioscoro, to the time Vicente saw Dioscoro already fallen.[35] Likewise, the nature and availability of weapons used in the attack also indicate that the perpetrators planned and prepared for it. Said the trial court in its decision of conviction, which deserves our concurrence:

> Finally, the offense charged is properly that of Murder qualified by treachery since the deceased was unarmed, and was in no position to ward off or repel the sudden, concerted and simultaneous attack against him by the three accused, with one hacking and stabbing and the others striking with steel bars or crowbars. Again the various wounds inflicted on the deceased bear mute testimony aforesaid to the suddenness, severity and ferocity of the attack, thus affording them to insure the killing of Oasnon without any risk arising from any defense he might make.[36]

On the award of damages, however, modification is called for. The trial court awarded a total of P91,875 as civil indemnity, P41,875 as actual expenses incurred by the heirs of the victim and P50,000 as death indemnity. But the records reveal that only P10,660 of the actual expenses were properly supported by receipts.[37] This being the case, we can only award P10,660 as the actual damages properly and adequately proved.[38]

Anent the loss of earning capacity of the deceased, the fact that no documentary evidence was presented to support the claim for such loss would not preclude recovery of damages.[39] The testimony of the victim's wife on the earning capacity of her husband sufficiently establishes the basis for making such an award.[40] Dioscoro Oasnon was 36 years old[41] at the time of his death. He earned P195 a day as a contract laborer.[42] In accordance with the American Expectancy Table of Mortality that has been consistently adopted by the Court,[43] the loss of his earning capacity is to be computed as follows:

> Award for Lost earnings = 2/3 [80-age at time of death] x
>
> [gross annual income - 50% (GAI)][44]
>
> = 2/3 [80-36] x [P71,175.00 - 50% (P71,175.00)]
>
> = 29.3333 x (P71,175.00 - P35,587.50)
>
> = P1,043,898.81

The resulting figure of P1,043,898.81 represents the lost earnings recoverable as damages in the concept of lucrum cessans.

WHEREFORE, the assailed decision of the Regional Trial Court of Pili, Camarines Sur, Branch 33, finding the appellants guilty of murder and sentencing them to reclusion perpetua is AFFIRMED, with the MODIFICATION that the award for actual damages is reduced to P10,660 to be paid jointly and severally by appellants to the heirs of the victim together with the award of P1,043,898.81 representing damages for the loss of earning capacity due to the victim's death, as well as P50,000 as civil indemnity, with costs against appellants.

SO ORDERED.

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

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[1] Rollo, pp. 25-32.

[2] Id. at 7.

[3] TSN, January 25, 1996, p. 4.

[4] Id. at 5-7.

[5] Id. at 8.

[6] Exhibit "A", Records, p. 8.

[7] TSN, January 26, 1996, p. 27.

[8] TSN, February 1, 1996, pp. 8-15.

[9] Id. at 16.

[10] TSN, February 7, 1996, pp. 3-4.

[11] TSN, February 1, 1996, p. 24.

[12] Also referred to as "Tony" in the transcripts.

[13] TSN, February 7, 1996, pp. 5-6.

[14] Ibid.

[15] TSN, February 1, 1996, p. 25.

[16] Id. at 28.

[17] Their faces were covered with t-shirts.

[18] Dioscoro Oasnon.

[19] TSN, May 7, 1996, pp. 15-16, however, according to testimony of Anthony Ebido, Ruben also pulled out a balisong, see TSN, May 15, 1996, pp. 17, 24.

[20] TSN, May 15, 1996, p. 17.

[21] TSN, May 7, 1996, p. 18.

[22] TSN, May 15, 1996, p, 20.

[23] Rollo, p. 32.

[24] Appellee's Brief, Rollo, pp. 9-11.

[25] TSN, May 7, 1996, pp. 14-15, 17-18.

[26] TSN, May 15, 1996, pp. 17-18, 24-26.

[27] TSN, May 7, 1996, pp. 11-12.

[28] TSN, February 7, 1997, pp. 16-17.

[29] TSN, January 25, 1996, pp. 6-7.

[30] TSN, February 1, 1996, pp. 26-27.

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[31] People vs. Fabon, G.R. No. 133226, 328 SCRA 302, 317 (2000).

[32] People vs. Galano, G.R. No. 111806, 327 SCRA 462, 475 (2000); People vs. De la Cruz, G.R. Nos. 109619-23, 291 SCRA 164, 184 (1998).

[33] People vs. Zamora, G.R. No. 101829, 278 SCRA 60, 76 (1997).

[34] TSN, January 25, 1996, p. 4.

[35] TSN, February 1, 1996, pp. 25-26; TSN, February 7, 1996, p. 6.

[36] Rollo, pp. 31-32.

[37] Exhs. "D", "D-1", "E", "E-1" and "E-2", Records, pp. 62-66.

[38] People vs. Cual, G.R. No. 131925, 327 SCRA 623, 648 (2000).

[39] Ibid, citing People vs. Verde, G.R. No. 119077, 302 SCRA 690, 706 (1999).

[40] Ibid.

[41] Exhibit "C-1" shows that he was 23 years old at the time his child was born in 1983, Records, p. 60.

[42] TSN, February 1, 1996, p. 16.

[43] People vs. Cual, supra, citing People vs. Dizon, G.R. No. 129893, 320 SCRA 513 (1999).

[44] Living expenses is computed as 50% of Gross Annual Income. See cases of People vs. Alo, G.R. No. 125533, December 27, 2000, p. 10; People vs. Aspiras, G.R. No. 121203, 330 SCRA 479, 495-496 (2000); People vs. Flores, G.R. No. 129284, 328 SCRA 461, 476 (2000).

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