

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUSEBIO ENFECTANA, ALIAS “TOYTOY”, AND ERWIN ENFECTANA, ACCUSED-APPELLANTS.

G.R. No. 132028. April 19, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us on appeal is the decision[1] dated June 24, 1997 of the Regional Trial Court, Borongan, Eastern Samar, Branch 1, in Criminal Case No. 10582, finding appellants guilty of murder and sentencing them to suffer the imprisonment of reclusion perpetua.

Appellants herein were indicted in an Information[2] as follows:

That on November 2, 1994, at about 11:00 o'clock in the morning, at the National Highway, Barangay Cabay, Balangkayan, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with intent to kill and with evident premeditation and treachery and without justifiable cause, did then and there wilfully, unlawfully and feloniously bumped Leo Boco and the complainant Adelaida Boco with the tricycle (sic) of the accused, when the victim has just alighted from a passenger jeepney, then attacked, assaulted, hacked, stabbed and wounded Leo Boco with the use of sharp bladed weapons, which the accused provided themselves for the purpose, thereby inflicting injuries upon Leo Boco, which injuries caused the instantaneous death of Leo Boco, to the damage and prejudice of the heirs of the victim, in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines and other related laws and caused injuries on the complainant, Adelaida Boco, when she was bumped by the tricycle (sic) named “Pepit” owned and operated by the herein accused and driven by co-accused Erwin Enfectana.

CONTRARY TO LAW, with the attendance of the aggravating circumstances of: Evident premeditation, Conspiracy, Treachery and advantage taken due to superior strength or means employed to weaken the defense of the victim.

Upon arraignment, appellants pleaded “not guilty” to the charge. Thereafter trial ensued.

The first witness for the prosecution was ADELAIDA BOCO, widow of the victim, Leo Boco. She testified that on November 2, 1994, at around 11:00 A.M., while she and her husband were on their way home, they were sideswiped by a tricycle driven by appellant Erwin Enfectana with Efren Enfectana as passenger. As a result, her husband fell in a crouching position. When he was about to get up, appellant Eusebio Enfectana came from behind to stab him. Then appellant Erwin Enfectana and accused Efren Enfectana took turns stabbing Leo Boco, causing his death.[3]

DOMINADOR DIALINO, a 52-year-old farmer, testified that he saw appellants and co-accused kill the victim. According to the witness, he was at the store of one Olivo Contado, at around 11:00 A.M. of November 2, 1994. From there, he saw Leo and Adelaida Boco alight from a jeepney. He also saw a fast running tricycle which

bumped the vehicle of the Boco spouses. The tricycle was being driven by Erwin Enfectana who was with Efren Enfectana. They missed the Boco spouses who jumped away. Erwin and Efren Enfectana alighted from the tricycle and walked towards Leo Boco, who had fallen down. They were carrying short bladed weapons known as “depang”. [4] Dominador Dialino tried to stop them by going between them and the Boco spouses, to no avail. He heard Efren Enfectana shout, “bon-a na Tatay” (Father, stab him). He then saw Eusebio Enfectana stab Leo Boco. After Leo Boco fell, Erwin and Efren also stabbed him. [5]

BARTOLOME BAHASAN, a 54-year-old resident of Bgy. Cabay, Balangkayan, Eastern Samar, testified that sometime in 1985, the family of Eusebio Enfectana tried to move into the residence of Leo and Adelaida Boco but they were prevented by Leo. He also alleged that sometime in 1985, Leo Boco was waylaid by the Enfectanas (Eusebio, Erwin and Efren) but he was able to escape by swimming across the river. From then on, Leo Boco always tried to evade the Enfectanas. [6]

Dr. MICHAEL TAN, the Municipal Health Officer of Balangkayan, Eastern Samar, testified that he was the one who conducted the post-mortem examination on the cadaver of Leo Boco. According to him, the deceased suffered six stab wounds, and that the probable cause of death was the stab wound at the back that caused hemorrhage. He opined that in all probability, based on the sizes and nature of the wounds, not less than two weapons were used against the victim. [7]

On June 15, 1995, ADELAIDA BOCO was recalled to the witness stand to testify on the damages she and her family suffered and the expenses they incurred as a result of Leo Boco’s death. According to her, Leo Boco was a businessman who earns at least P20,000 a month by selling automotive parts in Cebu. She said that she incurred P50,000 in funeral expenses. She also spent for legal fees because she engaged a lawyer for the fee of P500 per appearance in court. Aside from these, she also alleged that since her husband’s death, she became the sole breadwinner of her family and the main source of livelihood for her five children. [8]

For its part, the defense presented DARIO D. ALDE, municipal treasurer of Balangkayan, Eastern Samar, as its first witness. He testified that there is no record of Leo Boco as businessman in the Municipality of Balangkayan. [9]

Next witness for the defense was Mrs. MANUELA CONTADO DIALINO. She testified that on November 2, 1994, she went to the cemetery of Balangkayan where she stayed from 8:30-9:30 A.M. She then proceeded to the waiting shed where she waited for a ride home. She was able to ride a tricycle at around 11:00 A.M. She alleged that Dominador Dialino was with her in the tricycle and that they arrived in Cabay at around 12:00 noon. Upon arriving home, they were informed that Leo Boco had been killed. [10]

Appellant EUSEBIO ENFEKTANA testified that on November 2, 1994, at around 11:00 A.M., while he was at home, someone arrived and informed him that his tricycle was involved in an accident. He went to the place and saw his tricycle turned upside down with its windshield broken. Suddenly, he saw Leo Boco running towards him with a “dipang” (a small bolo). He evaded the attacks of Leo Boco and managed to get hold of a piece of wood which he used to defend himself. Still, Leo Boco persisted in attacking him until he was able to get hold of a bolo which he used in stabbing Leo. According to him, he was able to stab Leo in the right hand and chest. Aside from this he was also able to hack him in the neck. As Leo fell down from these counter-attacks, according to appellant, he took Leo’s bolo and used this to stab him. He was then chased by the sons and the cousin of Leo Boco up to his house which they pelted with stones. After they stopped, Eusebio decided to call the authorities to surrender himself. [11]

Appellant ERWIN ENFEKTANA testified that he is 24 years old, married, and a resident of Cabay, Balangkayan, Eastern Samar. According to him, at around 11:00 A.M. of November 2, 1994, while he was waiting for

passengers in Bgy. Cabay, Balangkayan, he saw Leo Boco running toward him with a small bolo. In his effort to escape, he accidentally bumped his tricycle on a fence. He fell down because of the impact but he immediately stood up and ran away because Leo Boco was still chasing him with a bolo. In order to escape, he hid in the house of Osias Montes where he learned that his father, Eusebio Enfectana, and Leo Boco had a quarrel.[12]

FE ANDALIZA GLINO testified that on the morning of November 2, 1994, while she was ironing clothes in the house of Nestor Borja, she heard a tricycle crashing into a wooden fence. When she looked out the window, she saw appellant Erwin Enfectana sprawled on the ground trying to get up. She also saw Leo Boco with a “dipang” approaching Erwin and trying to stab him. Erwin got up and ran away. She returned to her chores but after a while, she heard a woman shout, “Leo, ayaw kamo pag-igi, ayaw hito” (Leo, do not quarrel, not here.) She looked out the window and saw Leo Boco advancing, this time towards appellant Eusebio Enfectana. Leo was trying to stab Eusebio Enfectana while the latter parried the blows with a piece of wood. When Eusebio Enfectana was cornered against a banana store, witness Fe Glino said, she looked away until she heard somebody shouting, “Patay na si Leo Boco” (Leo Boco is already dead).[13]

Defense witness NENITA ALDE testified that she was the one who took the pictures of the appellants’ house, which show shattered windows and the stones allegedly used in breaking these windows.[14]

Another defense witness, EDDIE AMBAL, testified that on November 2, 1994, while he was on his way home from his aunt’s house, he saw a tilted tricycle. He also saw appellant Eusebio Enfectana being attacked by Leo Boco with a “dipang”. According to him, Eusebio Enfectana managed to parry these blows with a piece of wood until he reached a banana store where he was able to get hold of a bolo. This he used to stab and hack the victim, Leo Boco.[15]

Witness MARCOS LADIAO testified that on November 2, 1994, at around 11:00 A.M., while he was on his way to the house of a certain Romulo Elpedes, he noticed a tilted tricycle by the side of the road. He saw appellant Eusebio Enfectana standing near the said tricycle. He also saw Leo Boco with a small bolo approaching Eusebio Enfectana from the direction of the seashore. He heard Leo Boco shout, “kay waray ko man kamatay an anak, it amay it ak papatayon” (Because I failed to kill the son, I will kill the father). With these words, Leo Boco bumped Eusebio Enfectana and tried to stab him with the “dipang”. But Eusebio Enfectana managed to evade the thrust of Leo Boco’s weapon. Eusebio Enfectana was able to pick a piece of wood which he used to parry the blows of Leo Boco, at the same time backpedalling across the street where he (Eusebio Enfectana) was eventually cornered against the banana store of Contado. At said store, Eusebio Enfectana managed to get hold of a long bolo which he used to stab Leo Boco. When the victim fell down, appellant Eusebio Enfectana ran and jumped over the fence.[16]

Later, the prosecution recalled ADELAIDA BOCO as its rebuttal witness to disprove the allegations of Eddie Ambal that he (Ambal) actually saw the killing of Leo Boco.[17]

On June 24, 1997, the trial court rendered its decision as follows:

WHEREFORE, in view of the foregoing facts and circumstances, EUSEBIO ENFEKTANA and ERWIN ENFEKTANA are found guilty beyond reasonable doubt as co-principals of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, and further amended by R.A. 7659, section 6, which provide the penalty of Reclusion Perpetua to Death. Accordingly, Eusebio Enfectana and Erwin Enfectana are hereby sentenced to serve the indivisible penalty of reclusion perpetua, to pay the cost and to indemnify the heirs of Leo Boco in the amount of Fifty Thousand Pesos (P50,000.00) pursuant to a recent ruling of the Supreme Court (citing *People vs. Chica*, GR No. 117732, 1995. PP. vs. Sison, 159 SCRA 645). Records show, Eusebio Enfecatana and Erwin Enfectana are out on bail, the same is hereby ordered cancelled pursuant to Supreme Court Circular No. 2-92. As far as accused Efren Enfectana is concerned, he is still at

large to date.

SO ORDERED.[18]

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

I

...IN NOT CONSIDERING THAT APPELLANT EUSEBIO ENFECTANA ACTED IN SELF-DEFENSE.

II

...[IN] FINDING BOTH APPELLANTS GUILTY OF MURDER.

III

...IN CONVICTING APPELLANTS.

In essence, the issues here are (1) whether the trial court properly gave credence to the version of the prosecution while disbelieving that of the defense; (2) whether there is self defense on the part of Eusebio Enfectana; and, (3) whether the circumstance of treachery should be appreciated to qualify the offense to murder. Likewise, we must further inquire into the propriety of the civil indemnity and damages awarded by the trial court.

Appellant Eusebio Enfectana admits that he killed Leo Boco. He, however, alleges that he acted in self-defense. According to him, he was attacked first and he had no option but to kill the aggressor. On the other hand, appellant Erwin denies any participation in the killing and alleges that he was nowhere near the place where the incident transpired. Both appellants assail the finding of the trial court that they are liable for the death of Leo Boco. According to them, it was the victim, Leo Boco, who had the motive to commence the assault upon Eusebio Enfectana because of Boco's conviction resulting from a complaint lodged against him by the Enfectanas. They add that Boco also lost in a civil case involving his house.

Appellants also assail the inconsistencies in the testimonies of the prosecution witnesses, particularly those of Adelaida Boco and Dominador Dialino. Lastly, appellants contend that even if self-defense could not be appreciated, the crime committed was merely homicide and that only Eusebio should be held liable therefor.[19]

The Office of the Solicitor General (OSG), for the appellee, avers that the trial court committed no error in convicting appellants Eusebio and Erwin Enfectana for murder. The OSG contends that the failure of appellants to submit any counter-affidavit immediately after the complaint was filed against them is an indication that their version was no longer spontaneous nor truthful. According to the OSG, the claim that it was the victim who had the motive to commence the assault against the Enfectanas is unrealistic, since it is also true that the Enfectanas harbored ill feelings towards Leo Boco. The OSG stresses that the testimonies of the prosecution witnesses, as a whole, show no real discrepancy and that the inconsistencies pointed out by appellants refer only to minor and trivial matters.

Considering the evidence presented and the arguments adduced by appellants and appellee, we are unable to find merit in the present appeal.

The conviction of the Enfectanas was primarily based on the testimonial accounts of Adelaida Boco and Dominador Dialino which was found by the trial court to be more credible than the version of the appellants. It is doctrinally settled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the issue, having heard the witnesses themselves and observed their deportment and manner of testifying during trial. This rule admits of exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked,

misunderstood, or misapplied some facts or circumstances of weight and substance which could affect the result of the case.[20] Unfortunately for appellants, none of these exceptions is present in this case.

The testimonies of prosecution witnesses Adelaida Boco and Dominador Dialino were both positive and categorical. The assertion of appellants that they contradicted each other has no support in the records. Moreover, even if we were to agree with appellants that there were inconsistencies in their testimonies, they refer only to trivial and immaterial details. Thus, assuming these inconsistencies to be present, they tend to show that the witnesses were being spontaneous and were not coached or rehearsed. Settled is the rule that minor inconsistencies do not affect the credibility of a witness. On the contrary, they may be considered badges of veracity or manifestations of truthfulness on material points and they may even heighten the credibility of the witness.[21]

The records of this case show that the prosecution witnesses were consistent in their narration as to WHO committed the crime, WHEN and HOW it was committed. These are the material facts in this case which had been sufficiently and convincingly established by the prosecution. Compared with the allegation of the appellants, the prosecution's version is more believable and in accord with reality, hence deserving full faith and credence.

Appellants would want us to believe that it was the victim, Leo Boco, who initiated the attacks, first against Erwin Enfectana and then against Eusebio Enfectana, and that notwithstanding the fact that said Erwin and Eusebio were both caught unaware and unarmed by the sudden attacks of Leo Boco, they managed to evade him and escape unscathed. This is highly suspect and in our view, quite incredible. Evidence to be believed must not only come from the mouth of a credible witness but must itself be credible.[22] It is very unlikely that Leo Boco, if the version of the appellants were true, would fail to land even a single hit upon the body of either appellants. Yet neither Erwin nor Eusebio Enfectana showed such injury. The version of the appellants would not explain why co-accused Efren Enfectana suddenly disappeared after the incident. If it was true that they were innocent, then there is no reason for Efren Enfectana to flee and hide. Flight is an indication of guilt[23] and lends credence to the version of the prosecution in this case.

As for the issue of self-defense, it is an established principle that once this justifying circumstance is raised, the burden of proving the elements of the claim shifts to him who invokes it.[24] The elements of self-defense are: (1) that the victim has committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) that there be reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) that there be lack of sufficient provocation on the part of the person claiming self-defense or, at least, that any provocation executed by the person claiming self-defense be not the proximate and immediate cause of the victim's aggression.[25] The condition of unlawful aggression is a sine qua non; otherwise stated, there can be no self-defense, complete or incomplete, unless the victim has committed unlawful aggression against the person defending himself.[26]

Given the fact that the relationship between the parties had been marred by ill will and animosities, and pursuant to the rule on the burden of evidence imposed by law on the party invoking self-defense, the admission of appellant Eusebio Enfectana that he killed Leo Boco made it incumbent upon appellant to convincingly prove that there was unlawful aggression on the part of the victim which necessitated the use of deadly force by appellant. Unfortunately, appellant miserably failed to prove the existence of unlawful aggression on the part of the victim. As found by the trial court:

...The version of the accused [appellant] that it was Leo Boco who was the unlawful aggressor and that Leo Boco attacked and stabbed him while he was inspecting his tilted tricycle on the highway cannot be given faith and credit it being an afterthought, self-serving and expert invention and/or imagination sans truth.[27]

Weighing the conflicting versions of the prosecution and the defense, we agree with the trial court's conclusion that the prosecution's version is more in accord with the natural course of things, hence more credible.

Anent the third issue, we also agree with the trial court that treachery is present in this case. The victim and his wife were suddenly attacked as they were coming down from a jeepney. They had no idea that they were going to be assaulted. The manner by which the appellants commenced and perpetrated their assault, (1) by trying to bump Leo and Adelaida Boco, making the former lose his balance and more susceptible to an attack, and (2) by simultaneously attacking Leo Boco, hence preventing him from putting up any semblance of defense, shows beyond any doubt that there was alevosia in this case. Settled is the rule that an unexpected and sudden attack under circumstances that render the victim unable and unprepared to defend himself constitutes alevosia.[28]

As to damages, there is no dispute as to the propriety of P50,000 as civil indemnity for the death of Leo Boco. There being uncontradicted testimony regarding the funeral expenses and legal fees paid by the widow, Adelaida Boco, at least P50,500 should be awarded to her as actual damages.

WHEREFORE, the assailed decision of Branch 1 of the Regional Trial Court of Borongan, Eastern Samar, in Criminal Case No. 10582, finding the appellants Eusebio Enfectana and Erwin Enfectana guilty of murder, is **AFFIRMED**. Each of them is sentenced to the penalty of reclusion perpetua as well as to pay the heirs of the victim Leo Boco P50,000 as civil indemnity. In addition, appellants are hereby ordered jointly and severally to pay P50,500 as actual damages to the widow, Adelaida Boco. Lastly, let a copy of this decision be furnished to the National Bureau of Investigation and the Philippine National Police so that co-accused Efren Enfectana be apprehended promptly and brought to the bar of justice.

Costs against appellants.

SO ORDERED.

Bellosillo, Acting C.J., (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Corona, J., no part in the deliberations.

[1] Rollo, pp. 29-50.

[2] Id. at 11-A to 11-B.

[3] TSN, January 24, 1995, pp. 6-17.

[4] Also spelled as "dipang" in the records.

[5] TSN, January 25, 1995, pp. 34-49.

[6] TSN, February 7, 1995, pp. 3-10.

[7] TSN, February 20, 1995, pp. 53-60; August 10, 1995, pp. 65-66.

[8] TSN, June 15, 1995, pp. 5-14.

[9] TSN, November 13, 1995, pp. 2-6.

[10] Id. at 10-14.

[11] TSN, December 11, 1995, pp. 2-11.

[12] TSN, January 24, 1996, pp. 2-4.

[13] TSN, March 7, 1996, pp. 2-10.

[14] Id. at 34-40.

[15] TSN, July 3, 1996, pp. 3-11.

[16] TSN, October 3, 1996, pp. 2-7.

[17] TSN, April 10, 1997, pp. 3-9.

[18] Rollo, pp.49-50.

[19] Id. at 307-312.

[20] People vs. Enriquez, G.R. No. 138264, April 20, 2001, p. 14, citing People vs. Albarico, G.R. Nos. 108596-97, 238 SCRA 203, 212-213 (1994); People vs. Delovino, G.R. Nos. 116132-33, 247 SCRA 637, 646-647 (1995); People vs. Bayani, G.R. No. 120984, 262 SCRA 660, 678-679 (1996).

[21] Id. at 15, citing People vs. Padilla, G.R. Nos. 111956 & 111958-61, 242 SCRA 629, 642 (1995); People vs. Villegas, G.R. No. 118653, 262 SCRA 314, 321 (1996).

[22] People vs. Giganto, Sr., G.R. No. 123077, 336 SCRA 294, 307 (2000).

[23] People vs. Samolde, G.R. 128551, 336 SCRA 632, 652 (2000), citing People vs. Padlan, G.R. No. 111263, 290 SCRA 388, 401 (1998).

[24] People vs. Flores, G.R. No. 138841, April 4, 2001, pp. 15-16, citing People vs. Nuestro, G.R. No. 111288, 240 SCRA 221, 227 (1995).

[25] People vs. Flores, id. at 7-8.

[26] People vs. Flores, id. at 16, citing People vs. Sazon, G.R. No. 89684, 189 SCRA 700, 704 (1990); People vs. Bayocot, G.R. No. 55285, 174 SCRA 285, 291 (1989).

[27] Rollo, p. 43.

[28] People vs. Alvarez, G.R. No. 117689, 267 SCRA 266, 277 (1997).

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