

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PERICELITO VALLESPIN ALIAS “BOBOY,” ACCUSED-APPELLANT.

G.R. No. 132030. October 18, 2002

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Mandaue City, Branch 28, in Criminal Case No. DU-5016, convicting accused-appellant Pericelito Vallespin, alias Boboy, of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The Information dated April 18, 1995 charging the accused-appellant with the crime of murder reads:

"The undersigned accuses PERICELITO VALLESPIN alias ‘Boboy’ of the crime of Murder, committed as follows:

"That on the 25[th] day of January 1995 at 2:30 o’clock in the morning, more or less, at Barangay Pulpogan, Municipality of Consolacion, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and deliberate intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and hack RICO QUIÑANOLA several times with the use of an axe while the latter is sleeping, hitting and wounding him on the head which caused his instantaneous death.

"CONTRARY TO LAW."[2]

When arraigned on July 17, 1996, the accused-appellant, assisted by counsel, pleaded not guilty.[3] Thereafter, trial on the merits ensued.

The prosecution presented three witnesses: Juditha Bartolabac Mogote, the owner of the iron works shop where the victim and accused-appellant worked; Dr. Nestor Sator, the medico legal officer who conducted the autopsy, and Leonarda Quiñanola, the mother of the victim.

The defense presented two witnesses, the accused-appellant Pericelito Vallespin and Salvador Mogote, the common-law husband of Juditha Mogote, as a hostile witness.

Based on the testimony of the Mogote spouses, Salvador and Juditha, on the night prior to the incident, at around nine o’clock in the evening, the victim Quiñanola, the accused-appellant Vallespin and a certain Dodong Samson, all employees of the iron workshop owned by the Mogotes, were drinking liquor in the shop of their employers. At some point, the victim Quiñanola stood up to urinate and, while urinating, fell down at the rip-rap portion of the house. He thought that the group ganged up on him and mauled him but his boss, Salvador Mogote, explained that he was not mauled; he just fell. The accused-appellant Vallespin suddenly rushed towards the victim and strangled him, which prompted Mogote and Samson to separate the two. The Mogotes intervened and tried to pacify their workers but the accused-appellant Vallespin became unruly. For this reason, Samson punched him. Mogote then asked someone to fetch accused-appellant’s mother in order to pacify him.[4] After that, the accused-appellant left[5] and the drinking session apparently continued.[6] The Mogotes invited the victim to

sleep inside the room (where he usually slept) but he refused and said he would just stay outside and sleep in the shop.[7]

At around one o'clock in the morning, witness Mrs. Juditha Mogote went to the kitchen to fix her husband a midnight snack. On her way to the kitchen, she noticed that the victim was asleep inside the shop. It took her husband less than 20 minutes to finish his snack. She had just gone back to sleep when she heard a sound which awakened her. She then went to the bathroom to urinate and, while urinating, heard a rasping sound. From the bathroom, which was approximately five meters from the shop, she peeped into the shop and saw the accused-appellant hack the victim three times with a small axe. She was shocked by what she saw. Upon regaining her composure, she screamed, "Ah, Rico is dead!" Upon hearing this, the accused-appellant ran away, bringing with him the axe he used in killing the victim. Soon after, Mrs. Mogote's companions in the house awoke and tried to help the victim but it was too late as he was already dead. However, she waited until dawn to report the matter to the barangay headquarters as her place was isolated and she was afraid to go out in the dark.

For his part, the accused interposed the defense of denial and alibi. He testified that, on the night of the incident (January 24, 1995) and even the day prior to that (January 23, 1995), he was at his aunt's house in Martires-Lorega Street, Cebu City. He stopped working for the Mogotes on January 21, 1995, as he was not paid his salary for two weeks. On January 23, 1995, together with the victim Quiñanola, they demanded their salary from the Mogotes. When they failed to get it, accused-appellant left Consolacion for his aunt's house in Cebu City and, when he left, the victim was still arguing with the Mogotes. He learned of the murder of his cousin Quiñanola only on May 1, 1995 from his parents who went to Cebu City.

On May 2, 1997, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, finding the herein accused, PERICELITO VALLESPIN alias 'Boboy' guilty beyond reasonable doubt for the crime of Murder, said accused is hereby sentenced to reclusion perpetua, with the accessories of the law, to indemnify the legal heirs of the deceased Rico Quiñanola, the sum of P50,000.00 in connection with the latter's death, and to pay the costs.

"The accused being a detention prisoner shall be credited in the service of his sentence full time during which he has undergone preventive imprisonment.

"SO ORDERED." [8]

Appellant assigns the following errors:

"I.

"THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER NOTWITHSTANDING THE ABSENCE OF COMPETENT AND CONVINCING EVIDENCE TO SUPPORT THE CONVICTION.

"II.

"THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER AND IMPOSING UPON HIM THE PENALTY OF RECLUSION PERPETUA DESPITE THE ABSENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY, TO QUALIFY THE CRIME." [9]

Accused-appellant's arguments are devoid of merit.

We agree with the trial court that the evidence presented and submitted by the prosecution is more credible and trustworthy than the evidence presented and submitted by the defense, which consists merely of denial and alibi.

The eyewitness account of Juditha Mogote who positively identified the accused-appellant as the one who hacked the victim with an axe prevails over the self-serving denial and alibi of the accused-appellant. Well-settled is the rule that positive identification of the accused — when categorical and consistent and without any ill-motive on the part of the eyewitness — prevails over alibi and denial which are negative and self-serving, undeserving of weight in law.[10]

Witness Mrs. Mogote's testimony positively identified appellant as the perpetrator of the crime. First, she had a clear view of the criminal act as she was just five meters away from the shop where the crime happened and which was sufficiently illuminated.[11] Second, the medico-legal's testimony[12] and the medical report[13] corroborated her recollection of the specific details of the crime such as the location of the hack wounds inflicted by the accused-appellant, the weapon he used and the position of the victim while being hacked. As held in a recent case,[14] a detailed testimony acquires greater weight and credibility when confirmed by autopsy findings.

It is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[15] In the present case, there is no reason to deviate from this rule.

The accused-appellant's alibi that he was in his aunt's house in Cebu City when the crime occurred deserves little consideration. For alibi to prosper, the accused-appellant must prove not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to be at the scene of the crime at the time of its commission. In the present case, accused-appellant failed to substantiate his claim that he was in Cebu City. He did not present any witnesses to corroborate it. Neither did his alibi meet the requirement of physical impossibility as Martires-Lorega is only approximately 12 kms. away from Consolacion and thus, it was not physically impossible for him to be at the ironworks shop at the time the crime was committed. His defense of alibi must therefore necessarily fail as it cannot stand against the strong and positive identification by the witness Mrs. Mogote.[16]

The trial court also correctly found that treachery attended the killing of victim Quiñanola. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[17] The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.[18] It can exist even if the attack is frontal, if it is sudden and unexpected, giving the victim no opportunity to defend himself against such attack.[19] In essence, it means that the offended party was not given an opportunity to make a defense.[20] To prove treachery, the following must be shown: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense and retaliation, and (2) the deliberate and conscious adoption of the means of execution.[21]

We agree with the trial court that the crime was committed with treachery.

Regarding the first element, the prosecution was able to establish through the testimony of the spouses Mogote that the victim was drunk and lying on his back when he was attacked by the accused Vallespin. Salvador Mogote testified:

“ATTY. SURALTA:

“XXX

XXX

XXX

“Q:

What about Rico, did you have any knowledge at that time at 10:00 o’clock as to his whereabouts?

“A:

At past 7:00 o’clock it was he (witness indicating the accused) and Boboy who came back to the house bringing Tanduay and Red Horse.

“Q:

So, all in all were four persons who had returned to your place of work while you were having an over-time work?

“A: Yes.

“Q: After that returning (sic), as you said they have brought Tanduay and Red Horse, where did these Rico and Boboy go?

“A: In the house because when they arrived, the three of them, Bob, Rico and Dodong, were already drunk.”[22]

In addition, Juditha Mogote testified:

“FISCAL HERRERO:

“XXX

XXX

XXX

“Q: At the very time when you saw the accused hacking the deceased, what was the position of the deceased?

“A: He was lying on his back.

“Q: Where did he lie if you know?

“A: Plywood.

“Q: And this piece of plywood was it made into a bench wherein a person could lie? “

“A: No. We used that plywood as a shutter. It was a whole piece of plywood, sir.”[23]

These testimonies clearly show that the victim Quiñanola had no opportunity to defend himself. This Court has ruled in a number of cases that treachery attends the killing of a person who is drunk, unarmed, has no opportunity to defend himself and the attack is sudden.[24]

The second element of treachery is more difficult to determine as it involves a subjective aspect. However, Justice Reynato Puno’s dissenting opinion in *People vs. Antonio*[25] is instructive on this matter. In determining whether the mode of execution was deliberately adopted, three categories of evidence are considered: (1) planning activity or what the accused did prior to the killing; (2) motive or facts which show the accused’s prior relationship or conduct with the victim, and (3) nature of the killing or facts which show the manner of killing was so particular that defendant must have intentionally killed according to a preconceived design. The following examples were given to illustrate each category: (1) prior possession of the murder weapon or surreptitious approach of the victim; (2) prior threats to do violence to the victim or prior conduct of the victim known to have angered the accused, and (3) evidence showing that the wounds were deliberately placed at vital areas of the body.[26]

The evidence of the prosecution proved the deliberateness of the attack made by the accused-appellant Vallespin. The evidence showed the planning activity of the accused-appellant — the attack was carried out surreptitiously, at two thirty o’clock in the morning, after the accused-appellant had left the shop at least an hour earlier. The evidence also showed motive as it was proven that prior conduct of the victim angered accused-appellant — the victim accused his co-workers of mauling him when he fell which angered the accused-appellant. Furthermore, the testimony of the medico-legal officer and the medico-legal report proved that three of the four hack wounds were inflicted on the head of the victim and were fatal.[27] Based on these proven facts, it is obvious that the mode of attack was consciously adopted by the accused-appellant Vallespin. There was a break in the chain of events, considering that at least an hour had elapsed from the time the accused-appellant left the shop to the time he came back to kill the victim. As this Court has ruled in *People vs. Paynor*,[28] “[F]rom the means and method adopted by appellant to commit the crime, it would be incredible to assume that the same were not deliberately adopted to insure the consummation of the felony.”

According to the accused-appellant, his act of strangling the victim was a prior altercation that negates treachery. We disagree. The strangling incident cannot rule out treachery for the reason that it did not serve to forewarn the victim about the impending danger of death. In a case where this Court ruled out treachery, the prior altercation between victim and accused served as a warning of impending danger and alerted the victim to the possible aggression of the accused.[29] In the case at bar, no altercation transpired. When accused-appellant rushed towards the victim to strangle him, Salvador Mogote and Samson were able to separate them in a matter of seconds. The records do not show that victim Quiñanola fought back. In fact, it was Samson who punched accused-appellant Vallespin for being unruly. Also, the victim and accused-appellant were cousins and in good terms with each other, as testified by the spouses Mogotes.[30]

Even assuming that the accused-appellant’s act of strangling the victim put the latter on guard, treachery may still be appreciated. This Court has ruled that treachery may still be appreciated even when the victim is warned of the danger to his person as long as the execution of the attack made it impossible for the victim to defend himself or to retaliate.[31] The essence of treachery is the swift and unexpected attack by an aggressor on an unarmed and unsuspecting victim who does not give the slightest provocation, depriving the latter of any real chance to defend himself.[32] As the evidence presented has proven, victim Quiñanola was drunk and lying on his back when he

was attacked and had no real chance to defend himself against the fatal hack wounds inflicted by the accused-appellant.

As the attendant circumstance of treachery qualified the killing to murder under Article 248 of the Revised Penal Code, the imposable penalty is reclusion perpetua to death.[33] There being no aggravating or mitigating circumstances, the lesser penalty of reclusion perpetua must be imposed.[34]

In addition to the civil indemnity of P50,000 awarded by the trial court to the heirs of the victim, Rico Quiñanola, moral damages should also be awarded in the amount of P50,000. This needs no proof since the conviction of the accused-appellant for the crime charged is sufficient to justify the award.[35]

Although the victim's mother testified that her son was earning P70 a day as a welder, no evidence was presented to substantiate the actual earning capacity of the deceased at the time of his death. Also, no receipts were shown to substantiate the actual damages incurred as required by Article 2199 of the Civil Code.

WHEREFORE, the assailed Decision of the Regional Trial Court of Mandaue City, Branch 28, in Criminal Case No. DU-5016 finding accused-appellant Pericelito Vallespin (alias "Boboy") guilty beyond reasonable doubt of the crime of murder and sentencing him to reclusion perpetua, and ordering him to pay the heirs of the victim, Rico Quiñanola, civil indemnity in the amount of P50,000 is hereby AFFIRMED, with the MODIFICATION that he is likewise ordered to pay the heirs of the victim moral damages in the amount of P50,000.

Costs against the accused-appellant.

SO ORDERED.

Puno (Chairman), Panganiban, Sandoval-Gutierrez, and Morales, JJ., concur.

[1] Penned by Judge Mercedes Gozo-Dadole, Rollo, pp. 12-23.

[2] Rollo, p. 7.

[3] Records, p. 29.

[4] TSN, April 1, 1997, pp. 8-9.

[5] Sworn statement of Juditha Mogote, Records, p. 6.

[6] TSN, September 26, 1996, p. 10.

[7] Ibid at p. 11.

[8] Rollo, p. 23.

[9] Rollo, p. 75.

[10] People vs. Ayupan, et al., G.R. 140550, February 13, 2002.

[11] Sworn statement of Juditha Mogote, supra.

[12] TSN, November 13, 1996, pp.15-25.

[13] Records, p. 42.

[14] People vs. Ayupan, supra.

[15] *People vs. Castellano*, G.R. 130596, February 15, 2002; *Espano vs. Court of Appeals, et al.*, 288 SCRA 558, 563 [1998].

[16] *Ibid.*

[17] Article 14, paragraph 16, Revised Penal Code; *People vs. De Leon, et al.*, G.R. 144052, March 6, 2002.

[18] *People vs. Samson*, G.R. 124666, February 15, 2002; *People vs. Castellano*, G.R. 130596, February 15, 2002.

[19] *People vs. Castellano*, *supra*; *People vs. Reyes*, 287 SCRA 229 [1998].

[20] Luis B. Reyes, *The Revised Penal Code*, Book One, Thirteenth Ed., p. 412 [1993].

[21] *People vs. De Leon*, *supra*.

[22] TSN, April 1, 1997, p. 7.

[23] TSN, September 26, 1996, p. 11-12.

[24] *People vs. Pajenado*, 69 SCRA 172, 179-180 [1976]; *People vs. Naredo, et al.*, 276 SCRA 486 [1997]; *People vs. Feloteo*, 290 SCRA 627 [1998]; *People vs. Basadre*, 352 SCRA 573 [2001].

[25] 335 SCRA 646 [2000].

[26] *Ibid* at pp. 688-689.

[27] TSN, November 13, 1996, p. 19.

[28] 261 SCRA 615 [1996].

[29] *People vs. Antonio*, *supra*.

[30] TSN, September 26, 1996, p. 22; TSN, April 1, 1997, pp. 7, 9.

[31] *People vs. Samson*, G.R. 124666, February 15, 2002; *People vs. Belaro*, 307 SCRA 591, 607 [1999]; *People vs. Landicho*, 258 SCRA 1, 28 [1996].

[32] *People vs. Samson*, *ibid.*

[33] Art. 248, Revised Penal Code.

[34] Art. 63 (2), Revised Penal Code.

[35] *People vs. Castellano*, *supra*; *People vs. Clarino*, G.R. 134634, July 31, 2001; *People vs. Cortez*, 348 SCRA 663 [2000].

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