

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENN LOTOC, JOEL DURAN, JULITO GOLONG AND “BAUL”; ACCUSED. GLENN LOTOC, APPELLANT.

G.R. No. 132166. May 19, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The testimony of a single witness, if positive and credible, is sufficient to sustain a conviction for murder. The trial court's assessment of the credibility of witnesses and their testimonies is binding on appellate courts, absent any fact or circumstance of weight and substance that may have been overlooked, misapprehended or misapplied.

Delay in the filing of a criminal complaint, if properly explained, will not necessarily taint the prosecution of a crime.

The Case

The foregoing principles were used by this Court in reviewing the November 12, 1997 Decision[1] in Criminal Case No. 4276, promulgated by the Regional Trial Court of Catbalogan, Samar (Branch 29), which convicted Appellant Glenn Lotoc of murder and sentenced him to reclusion perpetua.

In an Information dated August 13, 1996, Glenn Lotoc, Joel Duran, Julito Golong and a person identified only as "Baul"[2] were charged by Provincial Prosecutor Juan C. Latorre Jr. with murder, allegedly committed as follows:

"That on or about the 17th day of March, 1996, at nighttime which was purposely sought, at Barangay 7, Ubanon District, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping and aiding one another, with deliberate intent to kill, with treachery and evident premeditation, and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hold and stab one Benedicto Mabulac with the use of a bladed weapon with which the said accused had conveniently provided themselves for the purpose, thereby hitting and inflicting upon said Benedicto Mabulac multiple stab wounds in the different parts of his body, which wounds directly caused his instantaneous death."[3]

At his arraignment on October 3, 1996,[4] Appellant Glenn Lotoc, duly assisted by Counsel de Oficio Edgardo C. Leonido of the Public Attorney's Office, pleaded not guilty. The three other accused were and have remained at large. Trial in due course proceeded against Appellant Lotoc only. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the court finds the accused Glenn Lotoc guilty beyond reasonable doubt of the crime of murder qualified by treachery and there being no mitigating or aggravating circumstances to consider[,] he is hereby sentenced to reclusion perpetua, to indemnify the heirs of Benedicto Mabulac, represented by Mrs. Rosario C. Mabulac, in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs."[5]

In view of the penalty imposed, the appeal was filed directly with this Court.[6]

The Facts

Evidence for the Prosecution

In the Appellee's Brief,[7] the Office of the Solicitor General, on behalf of the People, presented the following narration of the facts:

"On March 17, 1996, around 7:00 p.m., Glenn Lotoc (herein appellant), together with the three other accused, went to the house of Mrs. Trinidad Java, sister of Benedicto Mabulac (victim), and invited him to go out with them for a drinking session. All together, the four (4) accused, along with Benedicto, left for an unknown place (TSN, March 13, 1997, pp. 3-4; April 3, 1997, pp. 8-9).

"Around 9:00 p.m. of the same day, while on his way home from the house of Mrs. Trinidad Java where he offered to sell his pig to her husband Ramil, Cecilio Mabingnay (prosecution witness) saw Glenn Lotoc (appellant) in front of the Perez residence near the Samar National High School holding both hands of Benedicto behind his back (TSN, Feb. 24, 1997, p. 5).

"Thinking that they were only drunk, Mabingnay walked on but a few seconds later, he saw the three other accused from across the street coming towards Benedicto, with Joel Duran first stabbing Benedicto with a knife, followed by Julito Golong who also delivered a stabbing blow. Glenn Lotoc then released Benedicto. Thereupon, Benedicto ran but he was chased by Baul. When Benedicto fell, the four culprits disappeared in the dark (Ibid., Feb. 24, 1997, pp. 6-9; 14-17).

"Afraid that he might as well be stabbed, [sic] Mabingnay immediately left the place and informed the people at the Samar Memorial Chapel about the incident. He immediately left the place when the people ignored and just laughed at him (Ibid., Feb. 24, 1997, p. 9).

"Benedicto was brought by an unidentified tricycle driver to the Samar Provincial Hospital in Catbalogan, Samar where he died three hours later (TSN, Dec. 4, 1996, pp. 3-4, 13)."[8]

Evidence for the Defense

In his Brief,[9] appellant raises the defense of denial, claiming that he went to Pier I to refrigerate fish on the night of the murder. On his way home, he was allegedly asked by Cesar Doroja, a tricycle driver, to help him load a wounded person into his tricycle, which would transport him to a nearby hospital. Appellant states:

"Evidence for the defense tends to show that in the evening of March 17, 1996, accused Glenn Lotoc was ordered by his father to go to Pier I to refrigerate the fish to be sold the next day in Borongan, Eastern Samar. On his way home, his assistance was requested by Cesar Doroja, a tricycle driver, to lift aboard the tricycle a wounded person lying down at the corner of Lincoln Avenue and San Bartolome Street. A few moments [later], [W]itness Rodrigo Ybuhay also came/passed by, and himself assisted in lifting the wounded man whom they recognized as Benedicto Mabulac. They then brought him to the Samar Provincial Hospital. Ygbuhay and Doroja soon left while Lotoc stayed for a while in the hospital as no relative was around to care for the victim. He went home at about 10:00 o'clock that evening and because he was sleepy, he was not able to tell the relatives of Benedicto that they rushed him to the hospital. Early the following morning, he told Leslie Ann Java, Benedicto's niece, about the stabbing incident involving her uncle."

Ruling of the Trial Court

In convicting appellant of murder, the trial court relied mainly on the testimony of Cecilio Mabingnay. This witness claimed that he saw three persons stab the victim while his hands were being held behind his back by appellant. The trial court rejected appellant's claim that Mabingnay was unreliable because he failed to immediately report to the police what he had witnessed. It explained that the credibility of a witness was not impaired if such delay was sufficiently explained, as in the present case. "Fear of involvement in a case is a valid excuse for [a prosecution witness'] silence or reluctance to testify xxx." [10] The trial court ruled that the crime committed was murder qualified by treachery -- while the victim was being held by appellant, the latter's

companions were able to stab him repeatedly without risk to themselves and with no opportunity for the victim to defend himself.

Assignment of Errors

Appellant assigns to the trial court these alleged errors:

"I

GIVING FULL FAITH AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION WHICH IS INCOMPATIBLE WITH HUMAN NATURE AND EXPERIENCE.

"II

DISREGARDING THE THEORY OF THE DEFENSE WHICH IS MORE CREDIBLE AND IN ACCORD WITH REALITY.

"III

xxx FINDING APPELLANT GLENN LOTOC GUILTY OF THE CRIME OF MURDER WHEN NO EVIDENCE OF THE EXISTENCE OF A CONSPIRACY AMONG THE ACCUSED WAS ADDUCED NOR WAS THERE ANY FINDING OF CONSPIRACY IN THE DECISION OF THE TRIAL COURT." [11]

In sum, the appellant attacks (1) the credibility of the prosecution witnesses, and (2) the finding of conspiracy.

The Court's Ruling

The appeal is devoid of merit.

First Issue:

Credibility of Witnesses

Appellant contests the credibility of the lone prosecution eyewitness, Cecilio Mabingnay, arguing that the latter's account of the circumstances surrounding the incident are unpersuasive and not in accord with human experience. Appellant also points out that the long delay in reporting the crime may be because "private complainants spent time looking for a professional witness who can testify convincingly in court." [12] Further, he argues that his version is more credible than that of the prosecution.

Appellant's contentions are without merit. Time and again this Court has declared that "the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted." [13] The defense has given us no convincing reason to overturn the trial court's ruling that Mabingnay's testimony was credible.

Mabingnay clearly narrated how he saw the victim being held by Glenn Lotoc and repeatedly stabbed by Joel Duran, Julito Golong and a certain Baul.

"Q:

On March 17, 1996[,] at about 9:00 o'clock in the evening[,] where were you?

A:

I came from the cockpit and I went to the house of Ramil Jaba for the purpose of disposing my pig and when I returned[,] that was the time I saw them holding Benedicto and at the same time being stabbed.

x x x x x x x x

Q: Who was holding Benedicto at that time when you saw them on March 17, 1996 at about 9:00 o'clock?

A: Glenn Lotoc.

Q: Would you kindly tell the Honorable Court how he was being held by Glenn Lotoc?

A: (Witness [demonstrates] by putting both his arms behind his body.)

x x x x x x x x

Q: While Benedicto Mabulac was being held by Glenn Lotoc, do you know if there were other persons around?

A: There were only five of them, Benedicto Mabulac, Glenn Lotoc, Joel Duran, [and] Julito Golong xxx alias Baol.

Q: And while Benedicto was being held what transpired?

A: Joel approached and stabbed Benedicto.

Q: Now, in relation to Benedicto[,] where was Joel?

A: Joel was facing Benedicto when he approached.

x x x x x x x x

Q: Now, Mr. Mabingnay, that was 9:00 o'clock in the evening[;] how were you able to recognize Benedicto Mabulac, Joel Duran, Julito Golong and Glenn Lotoc?

A: Because it was bright as there was a lamp at the street light at the corner of the house of the Perez family.

Q: From where Benedicto Mabulac was being held by Glenn Lotoc[,] how far was the lamp you [were] referring to from here?

A:

From here to that table.

(Again witness [indicates] a distance [of] about six (6) meters.)

Q: What kind of lamp was that?

A: Mercury fluorescent bulb.

Q: After Benedicto Mabulac was stabbed by Joel Duran what else transpired?

A: Julito Golong followed and he also stabbed Benedicto.

Q: What did he do?

A: He also stabbed Benedicto.

Q: Do you know what instrument was used in stabbing Benedicto?

A: I do not know exactly because I was at a distance but I could see because it glittered.

Q: Where was he hit?

A: He was hit in his body.

Q:

Now, coming back to Joel Duran, you said that Joel Duran was the first one who stabbed Benedicto[;] what happened to Benedicto when the stab blow was delivered to him?

A: He remained standing because he was being held.

Q: Did Benedicto say anything when that stab blow was delivered?

A:

I did not hear any.

Q: When Julito Golong delivered [another] stab blow, what happened to Benedicto?

A:

When he was released by Glenn Lotoc[,] he ran away but in a short distance he fell down [as] he was being chased by alias Baol."[14]

Indeed, the testimony of a single witness, if positive and credible, is sufficient to sustain a judgment of conviction, even in a charge of murder.[15]

Appellant places undue emphasis on the fact that Mabingnay was merely a "substitute" who was presented because Rodrigo Ygbuhay, the first person contacted by the victim's parents to testify, refused to do so.[16] But aside from mere insinuations that Mabingnay was motivated to testify falsely, appellant did not present any clear

or convincing evidence to substantiate such claims. As earlier stated, the trial court's ruling on the credibility of a witness is generally binding on appellate courts. Proof, rather than innuendo, is needed to overturn the trial court's assessment.

The alleged delay of four months in the filing of the criminal Complaint was sufficiently explained by the victim's mother, who testified that she became ill shortly after the death of her son.

"Q:

Is it not a fact that the reason why you filed this case four (4) months after the death of your son was because you [had] a hard time xxx look[ing] for [a] witness to testify in your case?

Fiscal: That is argumentative, Your Honor.

Court: Answer.

A:

The reason is, although I already had a witness in the person of Cecilio Mabingnay[,] I could not file the case immediately because I was busy attending to the death of my son and besides I became ill." [17]

Likewise, Cecilio Mabingnay sufficiently explained his initial reluctance to report the incident to the policeman whom he saw near the scene of the crime and, later, to testify. He stated that he did not want to be involved in the case, and that it might affect his job as a mechanic which required him to go to other places. In countless cases, the Court has recognized the natural reticence of most people and their abhorrence to get involved in a criminal case. For instance, in *People v. Viñas*, [18] it was held that "[t]he natural reluctance of a witness to get involved in a criminal case, as well as to give information to the authorities is a matter of judicial notice."

Appellant argues that, contrary to human experience, the people laughed and ignored Mabingnay when he told them about the stabbing incident. We are not persuaded. Such reaction was not unlikely because, at the time, the assailants had fled and the victim had been taken to a hospital. Possibly, they thought that Mabingnay was merely joking. In any event, this is a trivial circumstance that does not affect the substantial parts of Mabingnay's testimony that appellant participated in killing the victim. Court decisions are based on facts and reasoned arguments, not on surveys of popular sentiments.

Appellant also anchors his innocence on his claim that he helped bring the victim to the hospital. Appellant's contention is misplaced. His act, assuming it to be true, does not by itself prove his innocence, for it could have been motivated by feelings other than a genuine desire for the victim to recover. Furthermore, when the tricycle driver saw him and asked for his help, his refusal would have aroused more suspicion. In any event, appellant's act, even if true, was not enough to overturn the positive identification by the witness Cecilio Mabingnay, whose testimony was found by the trial court to be both truthful and reliable. Notably, Mrs. Rosario Mabulac and Leslie Ann Jaba established that early in the evening of March 17, the four accused went to Jaba's house to invite him to a drinking spree. These prosecution witnesses thus refuted the claim of appellant that he had gone out to ice some fish on the night of the murder.

Second Issue: Conspiracy

Appellant argues that conspiracy between him and the other three accused was not sufficiently proven, because his act of holding the victim was separate from the stabs perpetrated by the three other accused. Appellant's

argument is unacceptable. "Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest." [19]

In the present case, the acts of the four accused demonstrate that there was conspiracy among them. The victim, while being held by Glenn Lotoc, was stabbed by Joel Duran. Afterwards, he was stabbed again by Julito Golong. If the appellant's act of holding the victim was indeed separate from the stabbing, then his natural reaction should have been to immediately let go of the deceased and flee the area as soon as the first stab was inflicted. Instead, he continued restraining the victim, thus enabling Julito Golong to complete his attack.

Crime and Punishment

We agree with the trial court that the killing was qualified by treachery. There is treachery when one commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution, without risk to oneself arising from the defense which the offended party might make. [20] In the present case, the appellant's act of holding the hands of the victim enabled the other conspirators to stab him repeatedly without risk to themselves.

As correctly stated by the trial court, the prosecution failed to prove any other aggravating circumstance that would warrant the imposition of the death penalty. Evident premeditation, which was alleged in the Information, was not established. For this circumstance to be appreciated, the following elements must be proven as clearly as the killing itself: (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that he clung to his determination, and (3) a sufficient lapse of time between the determination and the execution to allow the offender time to reflect upon the consequences of the act. [21] None of these elements was proven. Abuse of superior strength, on the other hand, cannot be appreciated, for it is deemed absorbed by treachery. [22]

Consistent with current jurisprudence, [23] we affirm the award of P50,000 as indemnity ex delicto. We disagree with the position of the solicitor general, based on *People v. Victor*, [24] that the amount should be increased to P75,000. In that case, the Court held that "starting with the case at bar, if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the indemnity for the victim shall be in the increased amount of not less than P75,000.00." That ruling involving rape and imposing the death penalty cannot apply to the present case.

WHEREFORE, the Decision of the Regional Trial Court is hereby **AFFIRMED**. Costs against appellant.

SO ORDERED.

Romero, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

Purisima, J., did not participate in the deliberations.

[1] Rollo, pp. 21-28; records, pp. 37-44. The Decision was written by Judge Auxencio C. Dacuycuy.

[2] Also spelled "Baol" in some parts of the trial court records.

[3] Rollo, p. 8; records, p. 1.

[4] Records, p. 14.

[5] Assailed Decision, pp. 7-8; rollo, pp. 27-28.

[6] The case was deemed submitted for resolution on February 3, 1999, when the Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

- [7] Rollo, pp. 85-96. The Appellee's Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Nathaniel E. Baldono.
- [8] Appellee's Brief, pp. 3-5; rollo, pp. 87-89.
- [9] Appellant's Brief, p. 4; rollo, p. 54. The Appellant's Brief, filed by the Public Attorney's Office, was signed by Arceli A. Rubin, Bartolome P. Reus and Tofel C. Garcia.
- [10] Assailed Decision, p. 6; rollo, p. 26.
- [11] Appellant's Brief, pp. 1-2; rollo, pp. 51-52.
- [12] Appellant's Brief, p. 7; rollo, p. 57.
- [13] *People v. Oliano*, GR No. 119013, March 6, 1998, per Panganiban, J. See also *People v. Gaurana*, GR Nos. 109138-39, April 27, 1998; *People v. Bersabe*, GR No. 122768, April 27, 1998; *People v. Tulop*, GR No. 124821, April 21, 1998; *People v. Castillo*, GR No. 120282, April 20, 1998; *People v. Siguin*, GR No. 126517, November 24, 1998; *People v. Sta. Ana*, GR Nos. 115657-59, June 26, 1998; *People v. Villamor*, 284 SCRA 184, January 16, 1998; and *People v. Bahatan*, 285 SCRA 282, January 28, 1998.
- [14] TSN, February 24, 1997, pp. 5-9.
- [15] *People v. Hayahay, et al.*, 279 SCRA 578, September 26, 1997; *People v. Tuvilla*, 259 SCRA 1, July 15, 1996; *People v. Panganiban*, 241 SCRA 91, February 6, 1995.
- [16] Appellant's Brief, pp. 8-9; rollo, pp. 58-59.
- [17] TSN, March 13, 1997, pp. 16-17.
- [18] 245 SCRA 448, June 29, 1995, per Vitug, J.
- [19] *People v. Magallano*, 266 SCRA 305, 314, January 16, 1997, per Regalado, J.
- [20] *People v. Dela Cruz*, GR Nos. 109619-23, June 26, 1998; *People v. Navarro*, GR No. 129566, October 7, 1998; *People v. Ombrog*, 268 SCRA 93, February 12, 1997; *People v. Cayabyab*, 274 SCRA 387, June 19, 1997.
- [21] *People v. Sumalpong, et al.*, GR No. 124705, January 20, 1998.
- [22] *People v. Violin*, 266 SCRA 224, January 14, 1997; *People v. Torrefiel*, 256 SCRA 369, April 18, 1996.
- [23] *People v. Quitlong*, GR No. 121562, July 10, 1998; *People v. Lagarteja*, GR No. 127095, June 22, 1998; *People v. Marollano*, GR No. 105004, July 24, 1997; and *People v. Caballes*, GR No. 102723-24, June 19, 1997.
- [24] GR No. 127903, pp. 15-16, July 9, 1998, per curiam.

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