

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGEL RIOS, ACCUSED-APPELLANT.

G.R. No. 132632. June 19, 2000

Ponente: PUNO, J.

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PUNO, J.:

If capital punishment is justified, it serves as a deterrent; if injudiciously imposed, it generates resentment.[1] This truism underscores the wisdom of the admonition that any decision authorizing the State to take life must be as error-free as possible.[2] At stake in the case at bar is life itself, hence, we shall strictly adhere to our bounden duty to exercise extreme caution in the review of the parties' evidence.

For the death of Ambrocio Benedicto due to a fatal stab wound, appellant Angel Rios was charged with the crime of murder in an information that reads:

"That on or about the 7th day of February 1996, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed instrument and with intent to kill one Ambrocio Benedicto, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and stab with the said bladed instrument the said Ambrocio Benedicto, hitting the latter on his body, thereby causing him serious physical injuries which directly caused his death.

Contrary to law."

Appellant Rios, assisted by counsel de oficio, entered a plea of "not guilty" to the charge against him.[3] Thereupon, trial on the merits of the case ensued.

Ambrocio and Anacita Benedicto owned a sari-sari store in their house in Marigold Subdivision, San Jose del Monte, Bulacan. According to Anacita, at around 6:30 in the evening of February 7, 1996, appellant Angel Rios, a neighbor, hurled stones at their house. A few minutes later, and while the Benedicto spouses were tending their store, appellant bought cigarettes. Ambrocio confronted appellant about the stoning incident and an altercation ensued between them.[4]

As the two engaged in a verbal tussle, Joselino Mesa and his fellow barangay tanods named Amorsolo Dayao, Rivera and Espino who were roving the vicinity, chanced upon the disputants. Having heard the appellant shout at Ambrocio, Mesa intervened and requested the two to part ways. He even escorted them to their respective residences.[5]

A few minutes later, appellant went back to the store.[6] Just then, Anacita saw her husband go to the terrace of their house. Appellant suddenly approached Ambrocio and stabbed his right stomach. Anacita was only a meter away from the antagonists; she was facing her husband's back while appellant was standing in front of Ambrocio. As Anacita started shouting, appellant fled.[7]

Mesa and his group saw Anacita weeping while Ambrocio was lying lifeless in the terrace of their house. Anacita

told the tanods that appellant had stabbed her husband. One of the tanods assisted Ambrocio but the latter succumbed to death even before they could reach the hospital. The postmortem certificate of death shows that Ambrocio died of "shock due to a stab wound at the chest around 3 cm. penetrating the right auricle (heart)."[8]

Mesa and his companions arrested appellant in his brother's house thirty (30) minutes after the crime happened.[9] The following day, Anacita and Mesa executed sworn statements before the police.[10]

With only appellant testifying, the defense interposed alibi. Appellant, a 39-year-old laborer from San Fernando, Romblon who had been staying for two decades with his brother in Graceville, Marilao, Bulacan, had reported to his job in San Jose del Monte, Bulacan at 7:00 a.m. of February 7, 1996. He stopped working at 5:00 p.m. and returned to his brother's house, reaching it at around 8:00 p.m. Moments later, Joselino Mesa, accompanied by some barangay tanods, arrived and brought him to the municipal hall of San Jose del Monte. They did not inform him that he was a suspect in the killing of Ambrocio Benedicto.[11] Appellant knew Ambrocio because they had built a house near the Benedictos' residence and it was from the latter's store that they would buy their cooking needs. He denied having seen Ambrocio on that fateful day of February 7, 1996.[12]

On December 3, 1997, the Regional Trial Court of Bulacan, Branch 22,[13] rendered a Decision finding appellant guilty beyond reasonable doubt for the murder of Ambrocio Benedicto. It found that the killing of Ambrocio was attended by the qualifying circumstance of treachery but that abuse of superior strength is "comprehended" by said circumstance. It ruled out the presence of evident premeditation. However, it considered dwelling as aggravating to the effect that even if the accused did not enter the victim's house, such as when he shot the victim from under the house or when he fired the shot that fell the victim who was inside his house, said circumstance is aggravating. The trial court thus disposed of Criminal Case No. 572-M-96 as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. finding the accused, ANGEL RIOS, GUILTY beyond reasonable doubt of the crime of murder as penalized under Art. 248, of the Revised Penal Code (as amended by Rep. Act No. 7659) and is hereby sentenced to suffer the death penalty;

2. accused is ordered to pay the following amounts to the heirs of Ambrocio Benedicto:

P50,000.00 - for the life of the victim (Ambrocio Benedicto)

P32,892.00 - actual damages (supported by Exhibits C, D, E and E-1 and based on Table I) P82,892.00

With 6% interest on all amounts due from the filing of the information on April 24, 1996 until said amounts have been fully paid.

SO ORDERED."

Appellant is now before this Court on automatic review of said Decision, with the following assignments of error:

"I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE EXISTENCE OF TREACHERY AS A QUALIFYING CIRCUMSTANCE.

III

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING DWELLING AS A GENERIC AGGRAVATING CIRCUMSTANCE.

IV

THE COURT A QUO GRAVELY ERRED IN AWARDING P32,892.00 AS ACTUAL DAMAGES."

The appeal is partly meritorious. While there is proof beyond reasonable doubt that appellant dealt the fatal stab wound upon Ambrocio Benedicto, the trial court erroneously appreciated the qualifying circumstance of treachery. Hence, appellant cannot be held liable for the crime of murder but for the lesser crime of homicide.

No cogent reason exists to overturn the trial court's assessment that Anacita Benedicto positively and unequivocally identified appellant as the felon who stabbed her husband. It is doctrinal that the trial court's evaluation of the credibility of a testimony is accorded the highest respect, for the trial court has an untrammelled opportunity to observe directly the demeanor of a witness and thus, to determine whether he or she is telling the truth.[14] Anacita's testimony on the matter clearly supports the trial court's finding on the matter. Thus:

"Fiscal:

q - Where is this Ambrocio Benedicto, your husband now?

a - He's already dead.

q - Tell us, what is the cause of death of your husband?

a - He was stabbed.

q - By whom madam witness?

a - By Angel Rios.

Fiscal:

q - Madam witness, if Angel Rios, is around in this courtroom will you be able to identify him?

Witness:

a - Yes, sir.

Fiscal:

Will you please stand up and look around and point him to us.

(Witness pointed to man in yellow shirt who gave the name of Angel Rios.)

Court:

q - Why do you say that it was Angel Rios who stabbed your husband?

a - Because I saw him.

Fiscal:

q - When was your husband stabbed by Angel Rios?

a - He was stabbed on February 7, 1996.

Court:

q - At what time?

a - More or less 8:00 in the evening.

Fiscal:

q - Where?

a - In the terrace of our house.

q - Where is your house located?

a - In Muzon, San Jose del Monte, Bulacan." (Underscoring supplied.)[15]

There is no doubt therefore, that Anacita had a good look at her husband's assailant and that she actually saw appellant stab Ambrocio as she was only a meter away from them, behind her husband who was facing appellant. She could not have mistaken another man for appellant because being neighbors, he was familiar to her.[16] Aside from being her neighbor, appellant even admitted that he used to be a customer in the Benedictos' sari-sari store where he would buy cooking needs. Familiarity with the physical features, particularly those of the face, is the best way to identify a person.[17] Thus, in the absence of an established ill motive on the part of Anacita, her identification of appellant as her husband's killer should be given full faith and credit, her relationship with the victim notwithstanding. Relationship with the victim per se is not proof of prejudice.[18]

Anacita's failure to name the weapon used by appellant and to recall his position as he stabbed Ambrocio cannot diminish her credibility. Her relative position to the two accounts for Anacita's failure to see the details surrounding the incident. Witnesses are not expected to remember every single detail of an incident with perfect or total recall.[19] Nevertheless, Anacita's one-meter distance from the two enabled her to observe the manner by which appellant stabbed Ambrocio - he did so in a manner described in the dialect as "pakadyot,"[20] meaning the bladed instrument came from underneath.

Appellant's positive identification of appellant as the perpetrator of the crime was thus proven beyond reasonable doubt by the consistent and firm testimony of Anacita Benedicto. Consequently, such positive identification effectively effaced appellant's alibi.[21] That she was the only eyewitness to the killing presented by the prosecution did not in any way dilute the evidentiary value of her credible testimony. It is entrenched in jurisprudence that the testimony of a single witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt.[22]

However, appellant is correct in arguing that treachery did not attend the commission of the crime. Its presence was not established beyond reasonable doubt. As this Court said in *People v. Derilo*:

"It is an ancient but revered doctrine that qualifying and aggravating circumstance before being taken into consideration for the purpose of increasing the degree of the penalty to be imposed must be proved with equal certainty and clearness as that which establishes the commission of the act charged as a criminal offense. It is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying and aggravating circumstance alleged to have been present and to have attended such killing, must similarly be shown by the same degree of proof."[23]

In this case, the prosecution failed to discharge its duty under the law as regards the qualifying circumstance of treachery. 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 specifically to insure its execution without risk to himself arising from the defense which the offended party may make. To constitute treachery, these two conditions must be present: (1) employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[24]

Treachery may not be appreciated where, as in this case, the attack against the victim cannot be categorized as unexpected and unforeseen so as to deprive him the opportunity to defend himself. By the facts of the case, where

the incident of the victim berating the accused for throwing stones at his residence preceded the fatal assault, a possible retaliation by the accused was not remote. As this Court has repeatedly held, there is no treachery when the victim is placed on guard, as when a heated argument preceded the attack, especially when the victim was standing face to face with his assailant. In that instance, the initial assault could not have been unforeseen.[25]

Moreover, where treachery is alleged, the manner of attack must be proven. Absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victim unfolded, treachery cannot be appreciated.[26] It cannot be presumed or concluded merely on the basis of the resulting crime.[27] In the case at bar, the prosecution presented Anacita's ambiguous testimony on how the attack began to support its claim that treachery attended the commission of the crime. Thus:

"q - Before the stabbing was there conversation between them?

a - My husband went outside our terrace.

q - Then what happened?

a - Then I saw him stabbed.

q - By whom?

a - By Angel.

q - What weapon?

a - I did not see the weapon used.

Court:

q - How many times?

a - Only once.

q - What did you do?

a - I shouted.

q - How far were you from the stabbing?

a - More or less one (1) meter.

Fiscal:

q - Madam witness, when your husband was stabbed by Angel Rios, what was his position at that time?

a - My husband was standing at that time.

q - Where was your husband hit by the stab of Angel Rios?

a - In his right stomach.

q - What was the position of the accused when he stabbed your husband?

a - I did not see.

q - You did not see who stabbed your husband? What I mean to say is was the accused also fronting your husband?

a - What I only saw, Your Honor, was my husband was stabbed." (Underscoring supplied.)[28]

On cross-examination, Anacita testified as follows:

"q - Madam witness, I will be showing to you transcript of stenographic notes taken down on May 31, 1996...

Court:

What is the defense?

Atty. Tolentino:

He did not do it, Your Honor.

q - by the question of the court, 'What was the position of the accused when he stabbed your husband'?

Witness:

a - 'I did not see.' It was 'pakadyot' ma'am.

q - You said that the accused stabbed your husband in the manner that you said 'pakadyot.' Will you tell the court when your husband was stabbed by the accused how was he positioned in relation to your husband?

a - He was facing my husband.

Court:

q - Sitting down or standing up?

a - They were standing up.

q - What about you, what was the position of the accused in relation to you when you said you saw the incident?

a - I cannot understand where I was.

q - What about your position in relation to your husband when the incident was happening?

a - I only saw it when I went out.

x x x x x x x x.

q - Will you tell the honorable court the position of your husband in relation to you? Was your husband's back towards you or was your husband facing you?

a - My husband's back was in front of me.

q - What about the accused? How was he positioned in relation to you?

a - The accused was facing me frontally.

Atty. Tolentino:

q - And you said you were just one meter away from them?

a - I cannot remember because I did not see how he was stabbed."[29]

From this testimony, it is indubitable that Anacita saw the stabbing incident but she could not describe exactly how it was commenced notwithstanding what appears to be her conclusion that the stabbing was done in a "pakadyot" manner. This may perhaps be blamed on the frailty of human memory but it does not obliterate the fact the she actually saw the stabbing incident. The doubt as to its manner or mode of execution should therefore be resolved in favor of the appellant.

The trial court correctly appreciated the aggravating circumstance of dwelling or morada in this case. The word dwelling includes every dependency of the house that forms an integral part thereof[30] and therefore it includes the staircase of the house[31] and much more, its terrace. When a crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance.[32] Provocation in the aggravating circumstance of dwelling must be: (a) given by the offended party, (b) sufficient, and (c) immediate to the commission of the crime.[33]

We hold that the altercation between appellant and Ambrocio that immediately preceded the latter's fatal stabbing is not within the purview of the concept of provocation under Article 14 (3) of the Revised Penal Code. The un rebutted facts established by the prosecution show that it was the appellant who started the events that led to his unfortunate killing of Ambrocio, by stoning the latter's house. In an apparent show of unmitigated braggadocio, appellant even went to the victim's house on the pretext of buying cigarettes after the stone-throwing incident. The victim naturally confronted appellant about that incident. As the two engaged in heated argument, the roving tanods intervened and the two parted ways. However, a few minutes later, appellant returned to the victim's house and right at the latter's terrace, dealt him the fatal stab wound. Under these circumstances, to cater to appellant's claim that the victim provoked him would amount to erasing the duly established fact that by stoning the victim's house, appellant himself instigated the heated argument that resulted in his physical assault upon the victim.

The presence of the aggravating circumstance of dwelling warrants the imposition of exemplary damages against the appellant.[34] Such damages, the award of which depends upon the Court's discretion, shall be a part of the civil liability that may be imposed upon the appellant.[35] However, we agree with the Solicitor General that the trial court overlooked certain evidentiary requirements in the award of actual damages. Actual damages cannot be allowed unless supported by evidence on record.[36] The trial court mainly based its award of P32,892.00 on the photocopy of the receipt issued by the funeral parlor[37] and on a receipt issued by a livestock agricultural corporation.[38] The prosecution reserved its right to present the original copy of the receipt of the funeral parlor evidencing payment of the amount of P27,000.00[39] but it does not appear on record that it indeed presented that original copy. On the other hand, the receipt issued by the Broadway Livestock Agricultural Corporation in favor of one Sotero Espiritu was in full payment of the amount of P5,092.00 for an undecipherable purpose which the prosecution claimed was for "expenses." [40] However, considering that these "expenses" were not explained and the absence of a duly established connection between the death of the victim and the "expenses" paid to a livestock agricultural corporation, the receipt can not be given evidentiary weight.

It is necessary for a party seeking the award of actual damages to produce competent proof or the best evidence obtainable to justify such award. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized in courts. The courts will not rely merely on suppositions or conjectures.[41] Hence, only the amount of eight hundred pesos (P800.00) spent for the niche and funeral mass that is evidenced by an original receipt[42] shall be awarded to the victim's heirs.

Under Article 249 of the Revised Penal Code, the penalty for the crime of homicide is reclusion temporal. In view of the presence of the aggravating circumstance of dwelling or morada, the penalty should be imposed in its maximum period.[43] Applying the Indeterminate Sentence Law, the impossible penalty shall be twelve (12) years of prision mayor maximum to twenty (20) years of reclusion temporal maximum.

WHEREFORE, the Decision appealed from is MODIFIED and appellant is found guilty of the crime of homicide and is meted to suffer an indeterminate sentence of twelve (12) years prision mayor maximum to twenty (20) years reclusion temporal maximum, to indemnify the heirs of Ambrocio Benedicto in the amount of P50,000.00, to pay exemplary damages of P20,000.00, and actual damages of P800.00.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Vitug, J., on official leave.

[1] *People v. Godoy*, 321 Phil. 279, 346 (1995)

[2] *People v. Esparas*, 329 Phil. 339, 352 (1996)

[3] Record, p. 2.

[4] TSN, July 26, 1996, pp. 6-9.

[5] TSN, September 27, 1996, pp. 4-5.

[6] TSN, July 26, 1996, p. 8.

[7] TSN, May 31, 1996, pp. 6-10.

[8] Exh. "A-1."

[9] TSN, September 27, 1996, pp. 7-8.

[10] Exhs. "B" & "F."

[11] TSN, June 18, 1997, pp. 14-15.

[12] *Id.*, pp. 8-10.

[13] Presided by Judge Candido R. Belmonte.

[14] *People v. Obello*, 284 SCRA 79, 88 (1998)

[15] TSN, May 31, 1996, pp. 3-4.

[16] *People v. Cagalingan*, 188 SCRA 313, 319 (1990)

[17] *People v. Lagnas*, 222 SCRA 745, 757 (1993)

[18] *People v. Escandor*, 333 Phil. 277, 282 (1996)

[19] *People v. Alas*, 274 SCRA 310, 320 (1997)

[20] TSN, July 26, 1996, pp. 4-5.

[21] *People v. Bajar*, 346 Phil. 250, 262 (1997)

[22] *People v. Lascota*, 341 Phil. 593, 604 (1997)

[23] 338 Phil. 350, 364 (1997)

[24] *People v. Caisip*, 290 SCRA 451, 461 (1998)

[25] *People v. Salvador*, 344 Phil. 580, 596 (1997); *People v. Lopez*, 319 Phil. 734, 753 (1995)

[26] *People v. Nalangan*, 336 Phil. 970, 975 (1997)

- [27] *People v. Asis*, 286 SCRA 64, 74 (1998)
- [28] TSN, May 31, 1996, pp. 6-7.
- [29] TSN, July 26, 1996, pp. 3-6.
- [30] 1 AQUINO, THE REVISED PENAL CODE, 1987 ed., p. 316.
- [31] *People v. Alcala*, 46 Phil. 739-744 (1923)
- [32] Art. 14 (3), Revised Penal Code; *People v. Caisip*, 290 SCRA 451, 460 (1998) citing *People v. Feliciano*, 326 Phil. 719, 730-731 (1996)
- [33] 1 REYES, THE REVISED PENAL CODE, 13 ed., p. 339.
- [34] *People v. Esguerra*, 326 Phil. 670, 679 (1996)
- [35] Art. 2230, Civil Code.
- [36] *People v. Nialda*, 289 SCRA 521, 535 (1998)
- [37] Exh. "D."
- [38] Exh. "E."
- [39] TSN, July 5, 1996, p. 5.
- [40] *Ibid.*, p. 6.
- [41] *People v. Jamiro*, 344 Phil. 700, 722 (1997)
- [42] Exh. "C."
- [43] Art. 64 (3), Revised Penal Code.

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