

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GENEROSO MAGBANUA Y AHIT, APPELLANT.

G.R. No. 133004. May 20, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

Appellant Generoso Magbanua y Ahit appeals from the January 22, 1998 Decision of the Regional Trial Court of Davao City, Branch 10, in Criminal Case No. 27-442-92, convicting him of murder.

The information filed against appellant reads:

That on or about June 12, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with treachery and evident premeditation, armed with a gun and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and shot at close range one Remegio Diaz, thereby inflicting upon him mortal wounds which caused his instantaneous death.[1]

As appellant's whereabouts were initially unknown, the warrant of arrest was served only on June 13, 1996, four years from the time the crime was allegedly committed.[2] When arraigned on July 11, 1996, appellant pleaded not guilty.[3] Trial thereafter ensued.

The prosecution relies on the eyewitness accounts of Narciso Balucos and Narciso Rellin. Medico-legal officer Dr. Napoleon dela Peña and Salustiana Diaz, the victim's mother, also testified for the prosecution.

Narciso Balucos,[4] barrio captain of Dumalag, Baguio, Davao City, testified that on June 12, 1992, at around 3:30 p.m., he was gathering his copra on a bridge at Gumalang. Helping him were the victim and Narciso Rellin. Appellant, together with his more than ten companions, later approached and congratulated Balucos for having been chosen as Purok Leader. Shortly thereafter, appellant talked with hostility to the victim concerning the "killing in Lacson, Davao City," a case which involved appellant and the victim's cousins. Suddenly, appellant pulled out a handgun from his waist and fired a shot at the creek. Seconds after, while face to face with each other, appellant shot the victim twice in the face, first at the left cheek, then at the forehead. Balucos recalled that the muzzle of the gun was only about five inches away from the face of the victim, who was then standing an arm's length away from appellant. He further narrated that after the gunshots, he and Rellin ran away out of fear for their lives.

Narciso Rellin,[5] also an eyewitness, testified in corroboration of the testimony of Balucos. From a distance of four meters, he witnessed appellant shoot at the victim twice in the face at close range. After the second shot at the victim, he ran off together with Balucos. He added that the incident happened so fast that the victim did not have a chance to run for safety.

Dr. Napoleon dela Peña,[6] the medico-legal officer who conducted the post-mortem examination of the victim, testified on his findings. The Necropsy Report[7] stated, follows:

NAME :

REMIGIO DIAZ AGE : 36 yrs. old

ADDRESS :

Gumalang, Baguio District

PLACE OF AUTOPSY :

Angel Funeral Parlor

DATE OF

AUTOPSY :

June 13, 1992

NECROPSY REPORT

1.

Gunshot wound, entrance 1 cm. circumference, occiput, left trajecting medially downward with exit 2 cm. circumference maxillary right.

2.

Gunshot wound entrance 1 cm. circumference occiput right trajecting medially downward left with exit 2 cm. circumference maxillary right [sic].

CAUSE OF DEATH:

Shock due to massive hemorrhage secondary to gunshot wounds.

(Sgd.) Napoleon dela Peña, M.D.

Medical Officer VI

When asked in court to explain his findings as stated above, Dr. dela Peña testified that the first injury had an entry wound behind the left ear and an exit wound above the right jaw, equidistant to the lower end of the right ear and to the chin. The second injury had an entry wound behind the right ear and exit wound above the right jaw,[8] equidistant to the lower end of the left ear and to the chin. Contrary to the eyewitnesses' claim, he testified that it appears that the victim was shot from behind, and that the muzzle of the gun was more than two feet away from the victim. He declared that either of the wounds could have caused the victim's instantaneous death as both appeared to be fatal.

He, however, admitted that he issued the Necropsy Report only in 1996 when he received a subpoena, four years after he conducted the autopsy. The contents of his report were lifted from the findings he jotted on a page of his notebook, which the defense submitted as evidence.[9]

Salustiana Diaz,[10] the mother of the victim, testified that she and her husband spent for the funeral expenses of the victim. She also recalls seeing the victim before the embalmment with gunshot wounds on his right cheek, left cheek, and forehead. As proof, she showed a close-up picture[11] of the face of the victim while lying inside a coffin. The picture was taken in her presence by an unidentified photographer, upon the request of the victim's family during the wake. It showed a wound on the victim's forehead in between the eyebrows, and a sutured wound on the right cheek. She testified that she obtained the picture from the victim's son, Richard Diaz.

Testifying for the defense, on the other hand, were Richard Diaz, Jesusa Ba, Paquito Calimpas, and appellant.

As its first witness, the defense presented the sixteen-year-old son of the victim, Richard Diaz.[12] To refute the claim that the victim also suffered an injury on the forehead, he presented another picture[13] of the victim taken

from the foot of the coffin at a distance from the photographer. The victim's injuries were not visible from the picture. The young Diaz testified that the picture he gave his grandmother Salustiana Diaz was a copy of the same picture he presented in evidence. He declared that no other picture was taken of his father during the wake, and denied recognizing the dead man on the close-up picture earlier presented by his grandmother.

The defense next presented Jesusa Ba,[14] the victim's mother-in-law, who has been supporting the victim's widow and children. She mainly alleged that it was she who spent for the burial expenses of the victim, in contradiction to Salustiana Diaz's claim in her testimony.

Appellant Generoso Magbanua[15] testified to present his version of the events that transpired on June 12, 1992. At 3:00 p.m., he and his friend Paquito Calimpas were at the store in Centro Gumalang. A group of around ten of their friends passed by and invited the two of them to congratulate Narciso Balucos for having won the election as purok leader. On the way to Balucos's residence, they saw the latter on the bridge in Gumalang, gathering copra with Narciso Rellin and the victim. When appellant approached Balucos, the rest of the group went to the other side of the bridge, except Calimpas and Rellin, who remained near him and Balucos. When he reached out for a handshake, Balucos parried his hands and remarked that appellant campaigned for the opposing candidate. Appellant then replied that Balucos was not being sport. He then heard a gunshot coming from the other end of the bridge. Out of fear for his life, he ran towards his house which was 400 meters away from the bridge. A few seconds after, while running, he heard another gunshot. He recalls seeing his companions also flee the scene, but failed to see who fired the shot or whether anyone was hit. It was only the next day that he learned of the victim's death and the news that he was being suspected as the assailant, from passersby who were unknown to him.

On cross examination, he admitted that he was then the team leader of the Civilian Home Defense Force in the area, although he added that he was not in active service at the time, for he was then under suspension. Having no gun with him at the time of the incident, he decided to run away for his own safety. When he reached home, he never went out until the next day, for fear of his life.

Appellant further related that he was surprised that the two eyewitnesses testified against him after initially assuring him that they were going to execute affidavits of desistance. When he confronted them about it, they allegedly said that they were forced to testify by the then trial prosecutor Isaac Robillo, who threatened them with imprisonment. He added that his relationship with Prosecutor Robillo was not good, as he had a previous misunderstanding with a certain Dr. Acosta, who happened to be the prosecutor's brother-in-law.

Paquito Calimpas,[16] one of appellant's companions at the time of the occurrence, testified in corroboration of appellant's narration of the shooting incident. After hearing the gunshot coming from the opposite side of the bridge, which was 15 meters away from where he and appellant stood, he ran away in panic without looking back. Just like appellant, he only heard the two gunshots, but did not see who fired the shots or who got hit.

For rebuttal, the prosecution presented Isaac Robillo,[17] the trial prosecutor who took charge at the initial stages of the trial, to refute appellant's claim that he coerced the eyewitnesses to testify. He admits that Balucos and Rellin at first executed affidavits of desistance, wherein they manifested that they are "no longer willing to testify in this case" after the reconciliation of the families of the victim and appellant. However, the two witnesses later decided to testify after each receiving a subpoena, and after Robillo cautioned them that lying under oath may subject them to prosecution for perjury. Robillo denied any personal interest in the case, and claimed that the only Dr. Acosta he knows is the brother of his sister-in-law.

Finding the testimonies of the eyewitnesses worthy of belief, the court a quo convicted appellant of the crime charged. It dismissed the medico-legal's contradictory findings as unreliable and appellant's version as incredible. It also ruled that the crime was attended by treachery, which qualified the killing to murder. It thus

sentenced appellant, as follows:

WHEREFORE, this Court finds the accused Generoso Magbanua y Ahit, alias Jun, guilty beyond reasonable doubt of the crime of murder for the killing of Remegio Diaz and hereby sentences him to reclusion perpetua, and orders him to indemnify the heirs of Remegio Diaz for his death in the amount of P50,000.00 as well as to pay the costs.

SO ORDERED.[18]

Hence, the instant appeal. Appellant questions his conviction on the following grounds:

First Assignment of ErrorTHE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONIES OFTHE TWO ALLEGED EYEWITNESS[ES] ARE IRRECONCILABLYINCONSISTENT AND CONTRADICTORY BY THEMSELVES AND WITHTHEIR AFFIDAVITS, MAKING THEM SIMPLY INCREDIBLE.

Second Assignment of ErrorTHE TRIAL COURT ERRED IN HOLDING THAT THE TESTIMONIES OF THETWO ALLEGED EYEWITNESSES OF THE PROSECUTION ON THE GUNSHOTWOUNDS INFLICTED ON THE VICTIM [WHICH ARE] CONTRADICTORYTO THE FINDINGS AND TESTIMONY OF THE OTHER PROSECUTIONWITNESS (THE GOVERNMENT DOCTOR WHO CONDUCTED THEEXAMINATION AND AUTOPSY ON THE VICTIM'S CADAVER), PREVAILOVER SAID FINDINGS AND TESTIMONY OF THE DOCTOR.

Third Assignment of ErrorTHE TRIAL COURT ERRED IN NOT FINDING THAT THE EVIDENCE OFTHE PROSECUTION IS INSUFFICIENT TO SHOW THE GUILT OF THEACCUSED BEYOND REASONABLE DOUBT.

Fourth Assignment of ErrorTHE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THECRIME OF MURDER INSTEAD OF ACQUITTING AND ABSOLVING HIMFROM CRIMINAL AND CIVIL LIABILITY.[19]

Under his second and third assignments of error, appellant points out that the testimonies of the alleged eyewitnesses regarding the victim's injuries and the respective positions of the victim and appellant during the shooting are contradictory to the medico-legal findings of the government doctor. Such discrepancy, he claims, sufficiently raises reasonable doubt on the veracity of the eyewitnesses' testimonies.

Indeed, the Court observes the apparent inconsistency between the eyewitnesses' testimonies and the medico-legal findings. According to Balucos, he saw appellant get shot at the left cheek and at the forehead. Rellin corroborated this by saying that he saw appellant shoot at the victim's face twice. These assertions were supported by the testimony of the victim's mother, who submitted a picture of the victim showing injuries on the cheek and forehead. The medico-legal findings, however, disclose the victim's injuries to be above the left and right jaws, and none at the forehead. Moreover, while the eyewitnesses categorically declared that they saw appellant shoot the victim frontally at close range, Dr. dela Peña concluded that the assailant shot the victim from behind, from a distance of more than two feet.

A closer examination at how the medico-legal officer arrived at his findings discloses a plausible explanation to the contradiction between the doctor's conclusions and the testimonies of the eyewitnesses. The trial court observed that the Necropsy Report is undated and appears to have been newly issued. When confronted about this, the government doctor explained that it was his practice not to issue immediately necropsy reports because he was always busy in his department. He admitted that it was only upon the receipt of a subpoena in 1996 that he issued the report, the contents of which he copied from a notebook on which he originally recorded his findings. As noticed by the trial court, the particular page of his notebook which indicated the aforesaid findings bore unexplained alterations. To wit, in the description of the entry wound of the first gunshot injury, it appears that the words "occiput" and "maxillary" were initially interchanged. The same alteration appears in the description of the

exit wound. Also, the recorded conclusions on the notebook failed to state anything about the presence of powder burns, which would have indicated the distance of the gun from the victim. On the witness stand, however, Dr. dela Peña categorically declared that there was no indication of powder burns, presumably from his bare recollection of an autopsy that he conducted four years ago.

Moreover, the Court notes that the Necropsy Report failed to mention anything about an injury on the victim's forehead, which is clearly shown in the close-up picture submitted by the prosecution. The defense attempted to present evidence to refute this, to no avail. The second picture presented by the defense was taken too far from the victim's face, and is not as clear as the first picture. As for the defense witness's denial of the authenticity of the first picture, the trial court had this to say:

. . . Exhibit "B" is a close-up picture and [it] is very clear without doubt that it is the same man in the same coffin that is shown in both pictures as can be appreciated by the amount and thickness of hair of the dead man in Exhibit "5" and those of the same man in Exhibit "B," as well as by the frame of the glass cover, the green ribbon and blue flowers at the top of the coffin...Exhibit "B" clearly and positively shows [the gunshot wound on the forehead], and there is no sign that the picture has been falsified or is fake. The wound in between the eyebrows [is] not visible in Exhibit "5" because there is a trace of white running from the top of the forehead down to the nose in Exhibit "5," which is not present in the close-up picture, Exhibit "B." [20]

It is true that a government doctor's post-mortem examination is presumed by law to have been regularly performed.[21] This rebuttable presumption, however, cannot be successfully invoked in the present case, it appearing that the examining doctor was remiss in the performance of his duties as a medico-legal officer. The peculiar circumstances obtaining inevitably open to doubt the accuracy of the doctor's findings, especially in light of the clear, positive and categorical declarations of the eyewitnesses.

As observed by the trial court, the testimonies of the eyewitnesses, although with minor inconsistencies, categorically and unequivocally point to appellant as the victim's assailant. The pertinent portion of Balucos's testimony, which was substantially corroborated by Rellin, is quoted, as follows:

Q.

Now, when these friends of Generoso Magbanua approached your group, what did they tell you?

A. They congratulated me for having won as purok leader.

Q. Then what happened?

A. He also shook the hands of Remegio Diaz.

Q. What happened?

A.

And after shaking his hands, Generoso Magbanua shot Remegio Diaz on his right cheek.

Q. Where else did he shoot Remegio Diaz, if you know?

A. Forehead.

x x x x x x x x

Q. Do you know what happened to Remegio Diaz?

A.

Well, he fell to the cement but we did not know what happened to him because we ran away and we did not look back.[22]

On cross-examination, he remained steadfast in his narration of the incident:

Q.

Now, how did Magbanua fire the shot at Remegio Diaz?

A. He shot him in his face.

Q.

Were you really able to see the gun of Magbanua at the time that it was fired at the face of Diaz?

A. Yes, sir.

Q.

Now, what was, more or less, the distance from the tip of the gun or muzzle to the face of Remegio?

A.

Very near.

Q. How near?

A. As near as this, sir.

ATTY. ADVINCULA:

About five inches, Your Honor.

INTERPRETER:

About that distance, Your Honor.

ATTY. ADVINCULA:

Q. You really saw that part of the face that was hit?

A. Face. He was hit on his left cheek bone.

Q. And then?

A. And then successive fires were shot again and [he was] hit on the forehead.

Q. You sure about that?

A. That is what I saw, sir.[23]

Appellant seeks to interject doubt on the eyewitnesses' testimonies by pointing out inconsistencies on certain details, and discrepancies with the affidavits executed by the witnesses. With regard to the variances in the testimonies, it bears stressing that minor inconsistencies enhance the credibility of the witnesses, for these remove any suspicion that their testimonies were contrived or rehearsed.[24] The fact that the statements of the two

prosecution witnesses differ on some minor details does not in any way affect their credibility. Persons who witness an event may perceive it from different points of reference, hence they may have different accounts of how the incident took place. What is important is that their testimonies reinforce each other on the essential facts and that their versions corroborate and substantially coincide with each other to make a consistent and coherent whole.[25]

As regards the alleged discrepancies of the witnesses' testimonies with their affidavits, suffice it to say that oral testimony commands greater weight than a mere affidavit.[26] For, oftentimes, affidavits taken *ex parte* do not reflect precisely what the declarant wants to impart, as they are usually prepared by other persons who use their own language in writing the statements.[27] Note must also be taken of the fact that the witnesses in this case were testifying on an incident which had occurred four years earlier. Error-free testimonies thus cannot be expected from them, considering the limitations of human memory.

Appellant attempts to impute ill motive upon the prosecution by alleging that the trial prosecutor, who he claims had an axe to grind against him, forced the eyewitnesses to implicate him. He claims that the trial prosecutor was seeking vengeance for the latter's relative by affinity, with whom appellant allegedly had a misunderstanding, and who happened to be the eyewitnesses' employer. The Court has held that while motive, bias, or interest of the witness in testifying affects a witness's credibility, the supposed presence of improper personal motives on the part of a witness to testify against the accused should be supported by satisfactory proof in order that his testimony may be considered biased.[28] In the present case, as aptly found by the court *a quo*, the defense failed to present evidence to support the imputation of ill motive other than hearsay evidence and mere inference of personal interest on the part of Prosecutor Robillo. Moreover, appellant's testimony was sufficiently refuted by Prosecutor Robillo's testimony, which belied appellant's allegations. Given, therefore, the absence of evidence that the prosecution's principal witnesses were actuated by ill motives, their testimony is entitled to full faith and credit.[29]

In comparison to the strong testimonial evidence of the prosecution, appellant's defense of denial miserably pales. The trial court found it unnatural for appellant, who was a Civilian Home Defense Force leader, to scamper away from the commotion without even looking back. In its Decision, the court *a quo* stated that: "It is apparent that the accused made up such incredible version because he could not point to anyone else on the bridge who shot Diaz as only he did it, as testified to positively by two eyewitnesses who were very near them on the bridge at the time." [30] It is elementary that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[31]

In the end, the rule is settled that where the conviction of an accused hinges on the credibility of the witnesses and the veracity of their testimonies, the findings of the trial court are given a high degree of respect.[32] This is so because the assessment of the credibility of witnesses is best made by the trial court given its untrammelled opportunity to observe their demeanor on the witness stand.[33] Hence, unless some fact of weight and substance has been overlooked, misapprehended or misinterpreted, the trial court's findings on such matters are binding and conclusive on appellate courts.[34] In this case, none of the arguments raised by appellant presents any compelling reason for the Court to disregard the evaluation of the court *a quo*.

The Court next resolves the issue on the presence of treachery. In finding the presence of treachery, the court *a quo* ruled that:

The shooting of Remegio Diaz by the accused was attended by treachery in light of the evidence showing that, when the latter and his more than ten companions went to the bridge where Balucos, Diaz and Rellin were gathering the copra of Balucos, there was no hostile move on the part of the accused to forewarn Diaz; that on

the contrary, they congratulated Balucos for having been elected as purok leader; and that the shooting, although frontal, was sudden, unexpected and so fast [thereby] rendering Diaz unable to run or defend himself.[35]

Time and again, the Court has stated that treachery cannot be presumed; it must be proven as conclusively as the killing itself.[36] It is present when two elements concur, namely: (1) that the means, methods, forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, method or forms of execution were deliberately and consciously adopted by the accused without danger to his person.[37]

In the present case, the first element was sufficiently shown by the suddenness of the attack, giving the victim no opportunity to repel it or defend himself. The prosecution established that appellant, while conversing with the victim, suddenly pulled out a concealed gun from his waist, shot at the creek and, seconds after, shot the victim at the face. While it may be true that, as the defense points out, appellant talked to the victim with hostility shortly before the shooting, there was no evidence that the confrontation was heated or intense, or that appellant was provoked to shoot the victim.[38]

It must be noted, however, that mere suddenness of the attack would not, by itself, constitute treachery.[39] There is a further need to prove that appellant consciously and deliberately adopted the mode of attack to insure execution without risk to himself. The circumstances surrounding the case negate the presence of this second element. It was established that the shooting occurred in broad daylight, in an open area, with more than ten people around. The victim then was in the company of two of his friends, who could have come to his aid at anytime. Verily, if appellant wanted to insure that no risk would come to him, he could have chosen another time and place to shoot the victim.[40]

For failure of the prosecution to prove treachery or any other circumstance that would qualify the killing to murder, the Court finds that appellant should only be held liable for homicide.[41] The penalty imposed for homicide in Article 249 of the Revised Penal Code is reclusion temporal. Considering the absence of any aggravating or mitigating circumstances and applying in his favor the Indeterminate Sentence Law, appellant should be sentenced to suffer the penalty of eight years and one day of prision mayor medium, as minimum, to fourteen years and eight months and one day of reclusion temporal medium, as maximum.[42]

Finally, on the matter of appellant's civil liability, prevailing jurisprudence dictates the imposition of moral damages in the amount of P50,000[43] and temperate damages in the amount of P25,000.[44] The P50,000 indemnity fixed by the court a quo is sustained.

WHEREFORE, the appealed Decision is hereby MODIFIED. Appellant is found GUILTY beyond reasonable doubt of homicide and is sentenced to suffer an indeterminate penalty of eight years and one day of prision mayor medium, as minimum, to fourteen years and eight months and one day of reclusion temporal medium, as maximum. He is further ordered to pay the heirs of the victim the amounts of P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as temperate damages. Costs de oficio.

SO ORDERED.

Panganiban, (Acting Chairman), Ynares-Santiago, and Carpio, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

[1] Records, p. 1.

- [2] Id., at 33.
- [3] Id., at 39.
- [4] TSN, August 8, 1996, pp. 5-8; TSN, August 22, 1996, pp. 45-94.
- [5] TSN, August 12, 1996, pp. 2-40.
- [6] TSN, August 22, 1996, pp. 3-44; TSN, October 7, 1996, pp. 3-12.
- [7] Records, p. 76, Exhibit “A.”
- [8] TSN, April 2, 1996, p. 29.
- [9] Id., at Exhibit “4.”
- [10] TSN, September 24, 1996, pp. 2-12; TSN, March 11, 1997, pp. 5-19.
- [11] Records, p. 77, Exhibit “B.”
- [12] TSN, April 30, 1997, pp. 2-14.
- [13] Records, p. 106, Exhibit “5.”
- [14] Supra, note 11, at 15-25.
- [15] TSN, September 3, 1997, pp. 2-30.
- [16] TSN, July 3, 1997, pp. 2-13.
- [17] TSN, November 26, 1997, pp. 2-13.
- [18] Rollo, p. 134.
- [19] Id., at 55.
- [20] Id., at 28.
- [21] *People v. Tamayao*, 120 SCRA 412 (1983).
- [22] TSN, August 8, 1996, pp. 7-8.
- [23] TSN, August 22, 1996, pp. 76-77.
- [24] *People v. Jakosalem*, 378 SCRA 254 (2002).
- [25] *People v. Suyum*, 378 SCRA 415 (2002).
- [26] *People v. Mandaos*, 393 SCRA 292 (2002).
- [27] *People v. Milliam*, 324 SCRA 155 (2000).
- [28] *People v. Mantes*, 368 SCRA 661 (2001).
- [29] *People v. Nicholas*, 370 SCRA 473 (2001).
- [30] Rollo, p. 133.
- [31] *Dela Cruz v. CA*, 361 SCRA 636 (2001).
- [32] *People v. Guihama*, G.R. No. 126113, June 25, 2003.

[33] *People v. Jalosjos*, 369 SCRA 179 (2001).

[34] *People v. Guihama*, *supra*, note 31.

[35] *Rollo*, *supra*, note 29.

[36] *People v. Lumintigar*, 373 SCRA 126 (2002).

[37] *Luces v. People*, 395 SCRA 524 (2003).

[38] *People v. Coscos*, 374 SCRA 138 (2002).

[39] *People v. Mangahas*, 311 SCRA 384 (1999).

[40] *Ibid.*

[41] *People v. Bates*, G.R. No. 139907, March 28, 2003.

[42] *Luces v. People*, *supra*, note 36.

[43] *People v. Baltazar*, G.R. No. 143126, July 31, 2003.

[44] *People v. Abrazaldo*, 397 SCRA 137 (2003). [44] *People v. Abrazaldo*, 397 SCRA 137 (2003).

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