

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO DE LA TONGGA, ACCUSED-APPELLANT.

G.R. No. 133246. July 31, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 73, Antipolo, Rizal, finding accused-appellant Antonio de la Tongga guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim the amount of P50,000.00, as indemnity, as well as the sum of P30,000.00 as actual damages plus the costs of suit.

The information against accused-appellant alleged -[2]

That on or about the 7th day of January, 1990, in the Municipality of Cainta, Province of Rizal, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one, Pedro Bace y Clavillas on the vital part of his body, thereby inflicting upon the latter mortal wounds which directly caused his death.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty, whereupon trial on the merits proceeded.

The prosecution presented four witnesses, namely, Maxima Bace, Jesus Crisanto, Danilo Veneracion, and Macario Semera. On the other hand, the defense presented accused-appellant and his sister Lydia Dula as its witnesses.

The prosecution evidence shows that, on January 7, 1990, Jesus Crisanto, Danilo Veneracion and the victim Peter Bace went to the house of Paulino Reyes in Sapang Buli, Cainta, Rizal to attend a birthday party of one of the latter's children. Jesus Crisanto and Peter Bace arrived in Paulino's house at around 1 p.m. They were followed by Danilo Veneracion. While the group were having drinks outside the house, accused-appellant Antonio de la Tongga and two companions arrived. Crisanto offered them drinks. A few minutes after that, the group noticed that Peter Bace and accused-appellant were having an argument inside Paulino's house, about a meter away from where they were drinking. Crisanto testified that they could not understand why the two were having an altercation. The host tried to pacify them and was apparently able to do so because accused-appellant and the victim later shook hands.

Accused-appellant stayed for a short while and then left at past 2 p.m. Bace, Crisanto, and Veneracion stayed behind. Then between 3 p.m. and 4 p.m., they decided to go home but not before they had consumed several bottles of beer and a bottle of rum (Tanduay "lapad").[3] Paulino Reyes accompanied them, suggesting that they take another route, because accused-appellant, a known tough guy ("siga-siga") in the neighborhood, might be waiting for them along the way. The group walked until they reached Villarica Subdivision where they boarded a

tricycle going to St. Joseph Subdivision.

Crisanto sat on the right side of the tricycle, while the victim sat beside him. On the other hand, Veneracion took the seat inside the vehicle with Paulino Reyes sitting behind the driver.[4] As the tricycle was about to stop at St. Joseph Subdivision, accused-appellant appeared and suddenly stabbed the victim while the latter was still inside the tricycle. At the time, Crisanto was less than a meter away and saw the incident, while Veneracion saw accused-appellant when the latter was running away. Reyes and Veneracion, followed by Crisanto, immediately alighted from the said vehicle. The three then returned to the vehicle and rushed the victim to the hospital, but he was dead on arrival.[5]

Macario Semera, the tricycle driver, recalled that at around 4:45 p.m. on January 7, 1990, four men boarded his tricycle and asked to be taken to St. Joseph Subdivision. When they reached St. Joseph Subdivision, a commotion arose inside his vehicle. Suddenly, all his passengers ran away leaving one bloodied person slumped on the seat of the tricycle.[6]

Dr. Alberto Reyes of the National Bureau of Investigation testified on the fact and cause of death of the victim. He said that the victim sustained one (1) stab wound on the chest just above the heart which caused his immediate death. He added that a bolo could have been the weapon used by the assailant when he attacked the victim who was seated at the time.[7] The wound sustained by the victim was more described as follows:[8]

Wound, stab, 4.0 cm. long, linear in shape, edges clean cut, oriented downwards and slightly laterally, with sharp infero-lateral and contused supero-medial extremities, directed backwards, downwards and laterally, involving the skin and underlying soft tissues, penetrating the pericardial sac and the right ventricle of the heart, with an approximate depth of 17.0 cm.

Finally, the widow, Maxima Bace, testified that she incurred more than P20,000.00 for the funeral and hospital expenses of her husband.[9]

Accused-appellant denied he killed Peter Bace. He claimed that at past 1 p.m. on January 7, 1990, he was going to his sister's (Lydia Dula's) house in Sapang Buli, Cainta, Rizal to ask his nephew to accompany him to Bulacan when he noticed several men outside his sister's house drinking. As he tried to pass by the group, one of them stopped him and offered him a drink which he refused. Embarrassed, the man who offered him a drink got angry and pushed him. When accused-appellant's sister saw that her brother was having an altercation with the group, she took him away. Lydia added that she accompanied accused-appellant when he boarded a jeep in Celilu Compound. Accused-appellant said he arrived home twenty minutes later and did not return to his sister's place anymore. He added that he was arrested in December 1993 when he was in Marikina.[10]

On February 4, 1998, the lower court rendered its decision, finding accused-appellant Antonio de la Tongga guilty of murder qualified by evident premeditation. The dispositive portion of its decision reads:[11]

WHEREFORE, premises considered, this Court holds accused Antonio dela Tongga GUILTY of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as the killing of his victim was made with the qualifying circumstance of evident premeditation. The killing was likewise with the presence of the generic aggravating circumstance of treachery as the stabbing was done in a sudden and unexpected manner while the deceased was sitting inside the sidecar of a tricycle, thus tended directly and specifically to ensure its execution without any risk to himself arising from the defense which the victim might make. There being no mitigating circumstance to even the same, he is hereby sentence to RECLUSION PERPETUA and to pay the heirs of his victim the sum of Fifty (P50,000.00) as indemnity, and the sum of Thirty Thousand Pesos (P30,000.00) as actual damages. Costs against him.

SO ORDERED.

Hence, this appeal. Accused-appellant argues that-

- THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED HAD BEEN PROVEN BEYOND REASONABLE DOUBT
- THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE EXISTENCE OF EVIDENT PREMEDITATION AS A QUALIFYING CIRCUMSTANCE
- THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE EXISTENCE OF TREACHERY AS A GENERIC AGGRAVATING CIRCUMSTANCE
- THE TRIAL COURT GRAVELY ERRED IN AWARDING THE SUM OF THIRTY THOUSAND PESOS AS ACTUAL DAMAGES

First. Accused-appellant argues that the prosecution failed to establish the identity of the assailant, because it was not shown that Crisanto and Veneracion actually saw accused-appellant stab the victim. This is not true. Crisanto testified:[12]

Q:....Who was that companion of yours that was stabbed?

A:....Peter Bace.

Q:....Who was the person who stabbed him?

A:....Antonio dela Tongga.

Q:....You said you were riding on a tricycle at the time Peter Bace was stabbed, where was Peter Bace?

A:....He was riding the tricycle.

Q:....What part of his body was he stabbed?

A:....On his chest.

Q:....In relation to the person who stabbed him, where was Peter Bace facing?

A:....He was in front of Peter Bace.

Q:....What about at the time that Peter Bace was stabbed, where were you at that time?

A:....I was with him.

. . . .

Q:....Before Peter Bace riding, who was his companion in the tricycle?

A:....Me, sir.

Q:....How many of you inside the tricycle together with Peter Bace before this Peter Bace riding?

A:....We were three inside the tricycle.

. . . .

Q:....You are telling this Hon. Court that Peter Bace was inside the tricycle was already stabbed?

A:....Yes, sir.

. . . .

Q:....Now, this Antonio dela Tongga as you said stabbed Peter Bace who was inside the tricycle, how far were you from Antonio dela Tongga?

A:....I was less than one meter from Antonio dela Tongga.

Q:....This Peter Bace who was stabbed by Antonio dela Tongga as you said, would you be able to identify him?

A:....Yes, sir.

Q:....Will you please look around this courtroom and tell the Hon. Court if this Antonio dela Tongga is present now?

INTERPRETER:

....Witness pointing to a person who identified himself as Antonio dela Tongga.

On cross-examination, Crisanto said:[13]

Q:....You said that your companion Peter Bace was already stabbed and when he [was] stabbed you already to exit at the right side of the tricycle?

A:....Yes, sir.

Q:....You mean to say that you saw Peter Bace was being stabbed by the accused while he was already going outside and the tricycle at the right side?

A:....Yes, sir.

Q:....How did you able to see?

A:....Because when I was able to alight from the tricycle, that was the time Peter Bace stabbed that is why I immediately alighted from the tricycle when I alighted from the tricycle, he has already a stab wound.

Q:....How far was then Peter Bace from the driver when he was hit by the accused?

A:....Around ½ meter.

....

Q:....You said that you were seated at the right side of the victim, and you were also hit by the stabbing of the accused?

A:....No, sir.

Q:....You mean to say that the thrust of the accused by passed you and hit the victim Peter Bace?

A:....Yes, sir.

Q:....Were the thrust passed at your front or your back?

A:....In front of me.

....

Q:....When the victim was being stabbed by the accused, was the victim still sitting at the right position of the tricycle?

A:....Yes, sir.

Q:....You mean to say that the victim was facing at the front side of the tricycle?

A:....Yes, sir.

....

Q:....You said that the accused stabbed the victim, how far was the feet of the accused to the right side of the victim where you were sitting?

A:....One meter, sir.

Q:....After the accused stabbed the victim, what did the accused do?

A:....He run away.

Q:....And you rescued your companion Peter Bace when he stabbed by Antonio dela Tongga.

A:....Yes, sir.

Although Crisanto was a friend of the victim and took part in the incident between the accused-appellant and the victim, his testimony, as the trial court found, is reliable and credible. The general rule is that the findings of the trial court as to the credibility of the witnesses are to be given weight and a high degree of respect by appellate courts. Crisanto's testimony was corroborated by Veneracion. The latter testified that he was inside the tricycle with the victim when the latter was stabbed. He admitted that he did not see accused-appellant until the latter was running away. However, knowing accused-appellant and having just seen him that afternoon, Veneracion could not have been mistaken as to the identity of accused-appellant.

Accused-appellant further contends that it is doubtful whether these witnesses actually recognized the assailant, because they were drunk. This contention is likewise untenable. Crisanto admitted he was drunk, but the defense failed to establish that he and Veneracion were so drunk that they were completely deprived of their sense of perception. It has not been shown that it was impossible for them to know what was happening.[14] To the contrary, these witnesses gave detailed accounts of how the incident happened, and their testimonies were corroborated by the tricycle driver Macario Semera. As the trial court observed:[15]

There is no reason to doubt the testimony of the prosecution's witness particularly Jesus Crisanto and Danilo Veneracion, they positively identified the accused as the assailant it appearing that the incident happened at around 4:45 p.m. before the afternoon shade turn to dusk and the said witnesses were just (TSN, July 31, 1994, p. 25) beside the victim when the latter was stabbed to death by the assailant who was one meter away from the former.

Second. The claim of accused-appellant that he went home after his altercation with the group and that he did not go back to his sister's house is a mere alibi which cannot prevail over the testimonies of Crisanto and Veneracion identifying him as the assailant. The defense of alibi may sometimes be considered exculpatory, as when the guilt of the accused is not established beyond cavil. However, for such defense to succeed, it must be shown not only that the accused was at some other place at the time of the crime but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[16] Otherwise, as we have stressed time and again, the defense of alibi must always be received with caution. It should be proved by probable evidence which reasonably satisfies the court of the truth of such defense.[17] In the case at bar, accused-appellant failed to establish that it was physically impossible for him to be at the place where the crime occurred. As the trial court ruled:[18]

Trite as it is, the court has to impress on the accused once again [that] the doctrine of alibi is the weakest defense [an] accused can concoct. In order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of the commission.

The record disclosed that no physical impossibility exists since the distance between the scene of the crime and the place where the accused allegedly was at the time could be negotiated by jeep or tricycle in twenty minutes (TSN, p. 14, July 18, 1995) and the places involved are only one and a half kilometers (TSN, p. 4, July 18, 1995) away from each which could be traversed by any means of transportation or even by walking in less than an hour. Considering the time element between the period of about 1:30 p.m. (TSN, p. 3, September 7, 1995) when the altercation happened and the time when the felony happened at around 4:45 p.m. (TSN, p. 5, December 27, 1995) the accused has enough time to return [to] the locus criminalis after he said to have gone home at about 1:30 p.m. Needless to say, the accused's defense of alibi must fail, not only because of its inherent weakness but also because of its easy fabrication. The prosecution's account of the incident is therefore given credence.

Third. Accused-appellant questions the trial court's finding that there was treachery in the killing of Peter Bace. Accused-appellant argues that the prosecution failed to prove that he deliberately or consciously adopted means to

ensure the execution of the crime without risk to himself. He further asserts that the victim had sufficient opportunity to defend himself because he had been forewarned by Paulino Reyes that accused-appellant might ambush him on the way.

This contention is untenable. Treachery was shown by the testimony of Crisanto, to wit:[19]

Q....And the accused Antonio dela Tongga was on the ground standing beside the tricycle?

A....I do not know where he came from.

Q....When he stabbed Peter Bace, the accused was at the ground beside the tricycle?

A....I do not know where he came from because when we're to alight from the tricycle, he suddenly appeared.

Q....He used the exit of the tricycle?

A....The entrance, sir.

Q....You mean to say, the right side of the tricycle?

A....Yes, sir.

....

Q....Before the accused thrust the bolo to the victim, were you able to see the accused a minute or seconds before?

A....No, sir.

Q....Why?

A....I do not know where he came from, he suddenly appeared.

Q....And that you were able to ride from the tricycle when the accused stabbed the victim, is that right?

A....I was not able to go down.

Q....You were able to little bit stand up or just move in the said motorcycle?

A....I was just about to rise up.

Q....And that your face was going to the direction of the exit of the tricycle?

A....Yes, sir.

Q....That was the place where the accused suddenly appeared and then stabbed the victim, is that what you mean?

A....Yes, sir.

The fact that the victim had been forewarned by Reyes against possible attack does not negate the presence of treachery. What is important is that the victim was attacked even before he and his companions could get out of the tricycle. The mode of attack ensured the commission of the crime without risk to accused-appellant. As Crisanto said, accused-appellant suddenly appeared and stabbed the victim while they were still inside the tricycle. We said in one case:[20]

The essence of treachery is swift and unexpected assault on an unarmed victim, which renders him unable to defend himself by reason of the suddenness and severity of the aggression. Here, the weapon used, the nature of the injury inflicted, and the defenseless stance of the victim when attacked confluent lead to the inevitable conclusion that appellant deliberately adopted the murderous mode of commission to ensure the consummation of the offense with impunity.

For this reason, we find accused-appellant guilty beyond reasonable doubt of the crime of murder qualified by treachery. However, we find that the trial court erred in appreciating the qualifying circumstance of evident premeditation. There is no direct evidence to prove that accused-appellant planned the killing and that he clung to

his decision to commit the crime despite the lapse of sufficient time from his determination to its commission.

As this Court held in one case:[21]

In order that evident premeditation may be appreciated, it is necessary to prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit had clung to his determination and (c) a sufficient interval of time between the determination or conception and the execution of the crime that would be sufficient to allow him to reflect upon the consequence of his act and to allow his conscience to overcome the resolution of his will if he desired to hearken to its warnings (U. S. vs. Gil, 13 Phil. 530; People vs. Fuentesuela, 73 Phil. 553).

Such proof is lacking in this case. The mere fact that accused-appellant left Paulino's house at past 2 p.m. and sought the group at around 4:45 p.m. to kill the victim does not necessarily mean that there was evident premeditation. The evidence does not show the time when he decided to commit the crime and that he clung to his determination to kill the deceased.[22]

Fourth. Accused-appellant questions the award of actual damages by the trial court in the amount of P30,000.00 because, other than the testimony of the victim's wife, Maxima Bace, that she spent this amount for hospital and funeral expenses, no documentary evidence was presented by the prosecution to support this claim. We agree with this contention. To recover actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, on the basis of competent proof and the best evidence obtainable by the injured party.[23] In this case, there was no such proof to sustain the trial court's award of actual damages.

In lieu of actual damages, accused-appellant should pay the heirs of the deceased the amount of P15,000.00 as temperate damages. Art. 2224 of the Civil Code provides that temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." [24]

In addition, consistent with the prevailing doctrine, the heirs of the victim are entitled to the award of moral damages in the amount of P50,000.00 considering the mental anguish suffered by them on account of the victim's death.[25]

WHEREFORE, the decision of the Regional Trial Court, Branch 73, Antipolo, Rizal is AFFIRMED with the MODIFICATION that the award of actual damages in the amount of P30,000.00 is deleted and, in lieu thereof, accused-appellant is ordered to pay the heirs of the victim temperate damages in the amount of P15,000.00, and P50,000.00 as moral damages, in addition to the amount of P50,000.00 awarded by the trial court as indemnity, and the costs of suit.

SO ORDERED.

Quisumbing, Buena, and De Leon, Jr., JJ., concur.
Bellosillo, J., (Chairman), on leave.

[1] Per Judge Mauricio M. Rivera.

[2] Rollo, p. 4.

[3] TSN (Jesus Crisanto), pp. 4-8, 13-16 and 22-23, May 31, 1994; TSN (Danilo Veneracion) p. 3, Aug. 16, 1994.

[4] Id., pp. 9-10 and 29; Id., pp. 5-6 and 12-14.

[5] Id., pp. 9-12, 19-21, 24 and 29; Id., p. 14-15.

- [6] TSN (Macario Semera), pp. 5-7, Dec. 27, 1995.
- [7] TSN (Dr. Alberto Reyes), pp. 6-8, 10, and 12-13, Dec. 26, 1994.
- [8] Records, p.137; Exh. B.
- [9] TSN (Maxima Bace), pp. 6-7, April 12, 1994.
- [10] TSN (Antonio dela Tongga), pp. 3-8, 10-14 and 17, July 18, 1995; TSN (Lydia Dula) pp. 3-4 and 6, Sept. 7, 1995.
- [11] Records, pp. 21-22.
- [12] TSN, pp. 9-12, May 31, 1994.
- [13] Id., pp. 20-22, 24-25.
- [14] See *People v. Empleo*, 266 SCRA 454 (1993)
- [15] Decision, p. 8.
- [16] See *People v. Maloloy-on*, 189 SCRA 251 (1990); *People v. Suitos*, 220 SCRA 419 (1993); *People v. Manimtim*, 120 SCRA 324 (1983)
- [17] *People v. Gonzaga*, 77 SCRA 140 (1977)
- [18] Decision, pp. 6-7.
- [19] TSN (Jesus Crisanto), pp. 21, 26-27, May 31, 1994.
- [20] *People v. Capoquian*, 236 SCRA 655 (1994)
- [21] *People v. Manzano*, 58 SCRA 250 (1974)
- [22] *People v. Danque*, 228 SCRA 83 (1993)
- [23] See *People v. Degoma*, 209 SCRA 266 (1992)
- [24] *People v. Lopez*, G.R. No. 119380, August 19, 1999; *People v. Oliano*, 287 SCRA 158 (1998)
- [25] *People v. Francisco*, G.R. No. 121682, April 12, 2000; *People v. Suplito*, G.R. No. 104944, September 16, 1999; *People v. Panida*, 310 SCRA 66 (1999); *People v. Espanola*, 271 SCRA 689 (1997)

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