PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO @ BOOMING VILLAVER, PAULINO @ JUNJUN VILLAVER (AT LARGE), AND JEROME GARCES (DECEASED).

G.R. No. 133381. November 27, 2001

Ponente: VITUG, J.

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VITUG, J.:

The scythe of Death struck so abruptly; no one had an inkling it would again claim a soul in a town still reeling from the wrath of typhoon "Ruping."

On 26November 1990, about seven o'clock in the evening, while Vicente Real, Jr. (Real), was sitting on the wooden bench at the side of their sari-sari store in General Luna Street, Talisay, Cebu, Albert Guevarra (Guevarra) came to buy some food. Done, the young man forthwith left the store and was returning to board his bicycle. Momentarily, Real saw Romulo "Booming" Villaver (herein appellant) and Jerome Garces (Garces) arrive at the scene and approach Guevarra from two different directions. All too suddenly, Villaver, with a kitchen knife, stabbed Guevarra at the latter's right side. Apparently, Villaver had not stabbed deep enough because his quarry was able to remove the knife from his side. Garces, at this juncture, rushed to reach for the kitchen knife and, with it, stabbed Guevarra. Guevarra fell, stood up, and yelled for help. All throughout the incident, Paulino "Junjun" Villaver (Paulino) was also around and appeared to be more than a mere onlooker. When both his two co-accused scampered, Paulino also left the scene although, unlike them, he merely walked away. The wounded Guevarra hurried towards the Tourist Hotel where an American friend brought him to the hospital. Guevarra soon succumbed to his injuries.

A couple of days later, police authorities arrested Romulo Villaver. He was detained at the Talisay Municipal Jail, later released but soon re-arrested.

On 22 April 1991, Romulo Villaver was indicted for the killing of Guevarra -

> "That on or about the 26th day of November 1990, at around 7:00 in the evening, more or less, at Barangay Poblacion, Municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused willfully, feloniously and unlawfully acting in conspiracy with each other did then and there with intent to kill, by means of treachery, abuse of strength and evident premeditation, attack, hit and stab one Albert Guevarra which caused him serious injuries that led to his death immediately thereafter."[1]

Upon arraignment, on 26 July 1994, Villaver pleaded not guilty. Paulino remained at large while Garces was reported to have died.

Accused Romulo Villaver claimed innocence. He testified that at the time of the stabbing incident, he was at Lita Seguerra's store in Tabunok, a place approximately 260 meters from the poblacion where Guevarra was killed. He disclaimed any participation in the bloodshed.

Juanita Villaver, mother of Romulo Villaver and Paulino Villaver, took the witness stand to state that his two sons so looked alike, with the same build and profile, that a witness could easily mistake one for the other. Two days after Guevarra was killed, the Talisay police had come to their residence to arrest her two sons. Repairing to the vicinity of the crime to make inquiries, she was told that, owing to the darkness that plunged the town of Talisay following typhoon "Ruping," nobody actually had witnessed the incident.

Unswayed by the defense account, the trial court found accused Romulo Villaver guilty of the charge leveled against him and sentenced him thusly -

> "WHEREFORE, accused is guilty beyond reasonable doubt of the crime of Murder and is hereby sentenced to a penalty of reclusion perpetua and to indemnify the heirs of Albert Guevarra in the sum of P50,000.00 with costs against the accused."[2]

Assailing his conviction in the instant appeal, Villaver insists on the jaded apologia of alibi.

Vicente Real, Jr., an eyewitness, categorically declared having seen appellant and Garces approach and stab the victim. Real and appellant were friends and no ill-motive was attributed to Real.

For alibi to prosper the accused should be able to prove that he could not have possibly been in the vicinity of the crime at the time of its occurrence.[3] Appellant utterly failed to establish this fact. On the contrary, he himself testified that he was only about 260 meters away from the locus criminis at the time of its commission. It would have been relatively easy for him to go to the poblacion where the crime took place, go back to Tabunok and appear none the worse for it.

In any case, positive identification when categorical and consistent, with no ulterior motive being shown on the part of the eyewitness testifying on the matter, prevails over alibi. A bare and unsubstantiated denial being merely self-serving,[4] is itself hardly given credence.

In resolving an issue on the credibility of a witness, the Court must yield to the oft-repeated rule which holds that the trial court's evaluation of the testimony of a witness is accorded great weight. The Court, more than once, has explained that it should rightly give the trial court a wide latitude of assigning values to testimonial evidence because of its unique opportunity to so observe the witnesses on the stand as they testify. The trial court is aided by various indicia that could not be readily seen on record. The witness' manner of giving an answer, like the hesitant pause, the nervous voice, the undertone, the befuddled look, the honest gaze, the modest blush, or the guilty blanch, somehow can reveal if really the witness is telling the truth or weaving a web of lies. Unless, then, any fact or circumstance of significance and influence appears to have been overlooked or misconstrued, its findings on the credibility of witnesses should not be interfered with.[5]

It would not matter that it was Garces who finally dealt the fatal blow for there was evident conspiracy. Appellant and Garces both surreptitiously approach their quarry from two different directions. Appellant was the first to stab the unsuspecting victim without any warning given to, or provocation made by, the latter. It was Garces who then dealt the coup de grace. Afterwards, the duo immediately fled from the scene.

Conspiracy implies a concert of design that may be inferred from the acts of the malefactors which point to a joint purpose and a common design. Conspiracy does not require any overt agreement for an appreciable period prior to the perpetration of the crime. From the legal vantage point, it exists if, at the time of the commission of the offense, the accused would appear to have acted in concert with one another indicative of a community of intent.[6]

The aggravating circumstance of alevosia is appreciated when (1) the assault is unprovoked and unexpected, depriving the victim of any real chance to defend himself, or of avoiding it or escaping from it, without any

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provocation on his part, and (2) the offender has consciously adopted the particular means, method, or form of the attack employed by him.[7]

Clearly, the victim was completely unaware of the intention of appellant and his co-accused to kill him. He had just left the store and was about to board his bicycle when appellant, armed with a kitchen knife, emerged from nowhere and, sans any warning, lunged at him. His co-accused followed suit and delivered the fatal blow at the obviously weakened victim.

The award made by the trial court of P50,000.00 civil indemnity conforms with prevailing jurisprudence. Additionally, moral damages and exemplary damages are due. Under paragraph (1), Article 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries. In its generic sense, "physical injuries" includes death. Moral damages compensate for the mental anguish, serious anxiety and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of pecuniary loss.[8] The presence of the aggravating circumstance of treachery[9] likewise warrant the payment of exemplary damages.[10]

WHEREFORE, the decision of the trial court convicting appellant Romulo @ Booming Villaver of murder is AFFIRMED with MODIFICATION in that P50,000.00 moral damages and P20,000.00 exemplary damages are also ordered to be paid by appellant in addition to the civil indemnity of P50,000.00 already awarded by the court a quo. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] Rollo, p. 8.

[2] Rollo, p.15.

[3] People vs. Caisip, 290 SCRA 451.

[4] People vs. Enriquez, 292 SCRA 656; People vs. Antonio, 303 SCRA 414; People vs. Bahenting, 303 SCRA 558; People vs. Rabang, Jr., 315 SCRA 451; Abalos vs. CA, 321 SCRA 446.

[5] People vs. Tanzon, 320 SCRA 762; People vs. Bonito, 342 SCRA 405.

[6] People vs. Ubaldo, G.R. No. 128110-11, 09 October 2000.

[7] People vs. Reyes, 287 SCRA 229; People vs. Rafael, G. R. No. 123176, 13 October 2000.

[8] People vs. Bantillo, G. R. No. 117949, 23 October 200.

[9] People vs. Catubig, G.R. No. 137842, 23 August 2001.

[10] Article 2230, Civil Code.

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