

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VIRGILIO REFORMA Y PEDRIGAL, APPELLANT.

G.R. No. 133440. June 07, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Quezon City, Branch 99, convicting the appellant of murder and sentencing him to suffer reclusion perpetua.

The Facts

Zenaida Damian-Pondibida and her brothers, Nazario, Rolando and Jaime, all surnamed Damian, Roger Ramos and the appellant had stalls in the Balintawak market, Cloverleaf Compound, Balintawak, Quezon City. Their respective stalls were near each other. The appellant was the brother-in-law of the Damians, being married to their sister, Rosenda.

At 10:00 p.m. on February 9, 1993, Roger slept side by side with Nazario in the latter's stall. Zenaida, Rolando and Jaime were also in their separate stalls. At about 11:00 p.m., Roger was awakened by a commotion. Nazario and the appellant were quarreling. Roger was aghast when he saw the appellant, who was only about four arms' length away from the stall, stab Nazario on the left side of the chest. Zenaida, who was barely an arms' length away, also saw the appellant as he stabbed Nazario on the chest. When they saw the stabbing, Rolando and Jaime rushed to the scene. Rolando wrestled with the appellant for the possession of the bolo and managed to wrest it away from the latter. The appellant fled from the scene. Rolando, Jaime, Roger and Zenaida then brought Nazario to the Quezon City General Hospital where the latter expired. Zenaida and Roger gave their respective sworn statements[2] to PO3 Carlito Canlas on February 11, 1993, relating to the stabbing incident.

Dr. Florante F. Baltazar performed an autopsy on the cadaver of Nazario and signed Medico-Legal Report No. M-0237-93 which contained the following findings:

Fairly developed, fairly nourished male cadaver in rigor mortis with post-mortem lividity over the dependent portions of the body. Conjunctivae and lips were pale. Nail beds were cyanotic. There was a surgical incision at the anterior distal 3rd left forearm.

EXTERNAL INJURIES: TRUNK AND EXTREMITIES:

(1) Penetrating stab wound, anterior left thorax, 120 cms. from heel, 7 cms. from anterior midline, measuring 10 cms. x 4 cms. x 7 cms. depth, directed upwards, backwards, towards midline, fracturing the 4th left thoracic cartilage, piercing the pericardium and right ventricle of the heart.

(2) Incised wound, anterior left lower thorax, measuring 5.5 cms. x 0.2 cm. x 2 cms. from anterior midline.

(3) Incised wound, posterior left scapular region, measuring 3 cms. x 0.5 cm. (sic) 8 cms. from posterior midline.

(4) Incised wound, posterior right scapular region, measuring 6.5 cms. x 0.2 cm. (sic) 5 cms. from posterior midline.

(5) Multiple abrasions, right elbow, measuring 5 cms. x 5 cms.

(6) Incised wound, anterior distal 3rd right thigh extending to right knee, measuring 17 cms. x 0.6 cm.

INTERNAL FINDINGS:

(1) Recovered from the left thorax, 1,500 cc of blood and blood clots.

(2) Recovered from the stomach 1/4 glass of rice meal.

CONCLUSION:

Cause of death is penetrating stab wound, anterior left thorax.[3]

Dr. Baltazar also signed the victim's certificate of death.[4]

On February 12, 1993, an Information was filed in the Regional Trial Court of Quezon City, charging the appellant with murder. The accusatory portion reads:

That on or about the 9th day of February 1993, in Quezon City, Philippines, the above-named accused, did then and there, willfully, unlawfully and feloniously with intent to kill, with treachery, taking advantage of superior strength and evident premeditation, attack, assault and employ personal violence upon the person of NAZARIO DAMIAN, by then and there stabbing the latter with a bladed weapon (gulok), hitting him on the left side of his breast (sic), thereby inflicting upon him serious and mortal wounds which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Nazario Damian.[5]

The appellant was arraigned on March 10, 1993, assisted by counsel de parte, and entered a plea of not guilty.

The Defense of the Appellant

The appellant denied stabbing Nazario. He testified that at about 11:00 p.m. on February 9, 1993, his brothers-in-law, Rolando, Nazario and Jaime, all surnamed Damian, were having a drinking spree. He was in his stall at that time. After a while, his brothers-in-law invited him to join them in their drinking spree, but upon seeing that they were already drunk, the appellant refused. Rolando, Nazario and Jaime resented this rejection, and forthwith mauled the appellant, hitting him with hard objects. He lost consciousness. After about ten minutes, the appellant came to and found himself in the stall of Dioscoro Balingit. Momentarily, a policeman arrived, handcuffed him and brought him to the La Loma police station. A doctor at the Philippine Orthopedic Hospital examined his wounds and issued a Temporary Medical Certificate thereon.[6]

The appellant also testified that Rolando, Nazario and Jaime sold a coconut land in Quezon City to him for P30,000.00. There was, however, no document executed between them to serve as evidence of the sale. Furthermore, the Damian brothers took back the property and failed to refund him of his P30,000.00.

On February 14, 1993, the appellant filed a criminal complaint[7] against Rolando and Jaime Damian in the Office of the City Prosecutor of Quezon City. He executed a sworn statement[8] in support thereof. Dioscoro Balingit also executed a sworn statement[9] to support the said complaint.

Dioscoro Balingit testified that he worked for the appellant as a helper for P150.00 a week. In the evening of February 9, 1993, he and the appellant were arranging the bananas which the latter sold for a living. A heated altercation ensued between the appellant and Rolando Damian concerning their stalls. Rolando threw a bottle at the appellant, but the latter managed to evade the bottle. Jaime and Nazario then arrived and helped Rolando maul

the appellant. They hit the latter with a lead pipe and a folding bed. Dioscoro then helped the appellant to walk to his stall. Rolando then got a knife and stabbed him on the left thigh. Rolando stabbed him a second time, but as he was able to evade the blow, Nazario was hit on the chest instead. Rolando withdrew the knife, threw it away and fled. Jaime brought Nazario to the hospital. Dioscoro Balingit later executed a sworn statement^[10] at the La Loma police station.

On August 27, 1997, the trial court rendered judgment convicting the accused of murder. The decretal portion of the decision reads:

WHEREFORE, premises considered, this Court finds accused VIRGILIO REFORMA y PEDRIGAL, GUILTY beyond reasonable doubt of the crime of MURDER penalized under Article 248 of the Revised Penal Code, without any mitigating or aggravating circumstances, and hereby sentences said accused to suffer the penalty of imprisonment of reclusion perpetua and to pay the heirs of the deceased victim damages in the amount of FIFTY THOUSAND PESOS (PHP50,000.00) (People vs. Jose Adriano y Vargas, G.R. No. 104578, 06 September 1993).

It is understood that accused shall be credited in full of his preventive imprisonment.^[11]

The appellant now assails the decision, contending that:

I

THE LOWER COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE EVIDENCE OF THE PROSECUTION.

II

THE LOWER COURT GRAVELY ERRED IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

III

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED FOR THE OFFENSE CHARGED.^[12]

The appellant asserts that the trial court erred in giving credence and full probative weight to the testimonies of Zenaida and Roger and in disbelieving his testimony and that of Balingit. He avers that the inconsistencies between his testimony and that of Balingit are trivial and did not render the same incredible and barren of probative weight. He contends that the trial court erred in not finding that the victim was stabbed by his brother, Rolando, and not by him. The appellant further asserts that, as shown by his injuries, he was the victim of the vicious assault by Rolando, Nazario and Jaime.

The appeal of the appellant has no merit.

In denying having stabbed and killed the victim, the appellant thereby assails the credibility of Zenaida and Roger and the credibility and probative weight of their testimonies. However, the trial court gave credence and full probative weight to the testimonies of the said witnesses. It declared that “the testimonies of the prosecution’s witnesses are clear, positive, straightforward and devoid of signs of artificiality. No ill motive could be ascribed to them, even by herein accused Reforma, to falsely incriminate the accused.”^[13] The well-established rule is that, the trial court’s calibration and assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as its findings, are accorded high respect, if not conclusive effect, by the appellate court because of the unique advantage of the trial court of observing and monitoring at close range the demeanor and deportment of the witnesses as they testify.^[14] Although there are exceptions, we find no justification, after our review of the records, to deviate from the findings of the trial court and its assessment of the credibility and probative weight of the testimonies of the prosecution’s witnesses.

Zenaida testified how the appellant stabbed her brother with a bolo (gulok) on the chest. She was only four arms' length away from the place of the stabbing:

Q On February 9, 1993, in the evening, do you recall where you were?

A I was in our stall, Sir.

Q When you say "puwesto" (stall), you were at Cloverleaf Market, Balintawak, Quezon City?

A Yes, Sir.

Q At about 11:00 o'clock in the evening, on that same day, do you recall any unusual incident that happened?

A Yes, Sir.

Q What was that incident about?

A My brother was killed, Sir.

Q And who was this brother of yours?

A Nazario Damian, Sir.

Q You said your brother was killed, who killed your brother?

A Virgilio Reforma, Sir.

(Witness is pointing to a person wearing a white t-shirt whom when asked answered to the name Virgilio Reforma)

Q Why do you know Virgilio Reforma?

A He is the husband of my sister, Sir.

Q What is the name of your sister who is the wife of the accused?

A Rosenda Damian, Sir.

Q How did Virgilio Reforma kill your brother?

A The accused went to the place of my brother and he stabbed him.

Q When you say your brother, you are referring to Nazario Damian?

A Yes, Sir.

Q Was your brother hit?

A Yes, Sir. (Witness is pointing to her left [sic] chest).

Q What weapon did the accused use in stabbing your brother?

A (Witness is showing a measurement of 18 inches bladed weapon in the form of a small "gulok").

Q When you saw the accused stabbed (sic) your brother, how far were you?

A Three (3) arms' length.

Q After your brother was stabbed, what did he do, if any?

A

They grappled for the possession of the weapon while the same was implanted on my brother's breast (sic), he fell down.

Q As your brother fell down, what did the accused do?

A I called up my two other brothers who then came out and grappled also for the possession of the weapon.

Q And who were these two brothers of yours?

A

They are Rolando and Henry Damian and it was Rolando who was able to grab the possession (sic) of the weapon.

Q What did Rolando do after he was able to grab the possession (sic) of the weapon?

A He brought the weapon to the police.

Q How about Reforma, what did he do after the weapon from his hands was taken by Rolando Damian?

A He went away, Sir.

Q Where did he go, if you know?

A

To his stall because he has also a stall in Cloverleaf Market.

Q How far is his stall to the place where the stabbing incident took place?

A About four (4) arms' length away, Sir.[15]

Roger testified how he was awakened by the commotion between the appellant and the victim. He saw the appellant as he stabbed the victim on the chest with a bolo, and thereafter, fled from the scene:

Q

You stated that you are a vendor at (sic) Balintawak market, as a vendor, do you know the person of Nazario Damian?

A I know him, Sir.

Q As of February 9, 1993, how long have you known Nazario Damian?

A More or less 10 years, Sir.

Q Why do you know Nazario Damian?

A Because he is also a vendor beside my stall at (sic) Balintawak market, Sir.

Q Where is Nazario Damian?

A He's already dead, Sir.

Q How about Virgilio Reforma, do you know him?

A Yes, Sir.

Q How do you know him?

A

I have known him first, and he is also the same vendor near my stall at Balintawak and I have known him longer than Nazario Damian, Sir.

Q If Virgilio Reforma is inside the courtroom, will you kindly point him to this Honorable Court?

A (Witness pointing to a man wearing a yellow-orange polo shirt who identified himself as Virgilio Reforma)

Q In the evening of February 9, 1993, do you recall the time when you went to bed?

A About 10:00 in the evening, Sir.

Q Where did you sleep that night?

A At the stall of Nazario Damian, Sir.

Q Where is that stall located?

A Balintawak market, EDSA, Quezon City, Sir.

Q You went to bed at about 10:00 in the evening, what time did you wake up on that evening?

A I was waken-up (sic) by that incident about 11:00 in the evening, Sir.

Q And why did you wake up?

A I was waken up (sic) by that trouble, Sir.

Q What kind of trouble was that?

A Because Virgilio Reforma is (sic) stabbing Nazario Damian, Sir.

Q What was the weapon used by Reforma in stabbing the victim?

A A bolo like this (Witness is showing a length of a foot), Sir.

Q What else did you see as the accused Reforma was brandishing that bolo?

A I have seen him stabbing Nazario Damian, Sir.

Q How far were you from Virgilio Damian at that time you saw him stabbing Nazario Damian?

A About one arm's length, Sir.

Q Was Nazario Damian hit?

A Yes, Sir.

Q How many times?

A Two (2) times, Sir.

Q What part of Nazario Damian was hit?

A Here (Witness pointing to his left [sic] chest and his left leg), Sir.

Q And what did Nazario Damian do as he was being stabbed by the accused?

A He's (sic) trying to parry the stab blow but he was not able to do so, Sir.

Q How about you, what did you do when you saw Nazario Damian being stabbed?

A I step (sic) a little far, but when I saw that Nazario was hit, I got near them to help him and carried him, Sir.

Q How about Reforma, what did he do?

A He was held by the brothers of Nazario, Sir.

Q Who is that brother who held Reforma?

A Jimmy and Rolly Damian, Sir.

Q How is Rolly Damian related to the deceased?

A Brother, Sir.

Q What was the reaction of Reforma as he was being held by the Damian brothers, Jimmy and Rolly?

A He was trying to free himself, Sir.

Q Was he able to free himself?

A

Yes, Sir.

Q Where did he go?

A That I do not know for I am now (sic) trying to carry Nazario Damian, Sir.

Q

How about Jimmy and Rolly, what did they do as Reforma was able to extricate?

A They run (sic) towards me for I am (sic) bringing Damian and they helped me in carrying Nazario, Sir.

Q What happened afterwards?

A

After I brought Nazario to the hospital, we went back to the market at Balintawak, Sir.[16]

The testimonies of the prosecution's witnesses are corroborated by the post-mortem report of Dr. Florante Baltazar that the victim was stabbed on the chest. The flight of the appellant from the situs criminis, and his throwing away of the bolo in the process, are evidence of his guilt of the crime charged. There is no evidence on record that Roger and Zenaida nurtured any ill or devious motive to pillory the appellant and falsely ascribe to him the killing of Nazario. Hence, the said witnesses are presumed to have testified in good faith and their testimony entitled to full faith and credit.[17]

The appellant's bare denial of the charge against him cannot prevail over the positive and straightforward testimonies of the prosecution's witnesses, identifying and pointing to him as the perpetrator of the crime.[18]

The appellant's and Balingit's testimony, that the appellant was mauled and hit with a lead pipe and that Rolando stabbed Nazario once when he attempted to stab the appellant, is belied by the medico-legal report of Dr. Florante Baltazar that the victim sustained one penetrating stab wound on the anterior left thorax and four (4) incised wounds and multiple abrasions. Balingit has not adduced in evidence any medical certificate that he sustained a stab wound on his left hand. As between Balingit's testimony and the physical evidence, the latter must be upheld.[19] The appellant adduced in evidence a mere machine copy of the temporary medical certificate issued to him by an unidentified doctor who did not testify. The appellant cannot, thus, rely on the said certificate to fortify his defense. While he filed a criminal complaint against Rolando and Jaime in the Office of the City Prosecutor, docketed as I.S. No. 93-2460, it is incredible that he is not even aware of what happened to his

complaint.

The Crime Committed by the Appellant

The trial court convicted the appellant of murder under Article 248 of the Revised Penal Code, but failed to state any qualifying circumstance attendant to the crime. The Information alleges that the appellant killed the victim with treachery, taking advantage of superior strength and evident premeditation. However, the prosecution failed to prove any of the said circumstances beyond reasonable doubt.

There is treachery when the following conditions are present: (a) employment of means, methods or manner of execution to insure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, and, (b) deliberate adoption by the offender of such means, methods or manner of execution.[20] Since the prosecution's witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Treachery must be proved by clear and convincing evidence, or as conclusively as the killing itself.[21]

In this case, Zenaida and Roger did not see how the attack commenced. When Roger woke up, there was already an ongoing confrontation between the appellant and the victim.

The three requisites needed to prove evident premeditation are the following: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[22] The prosecution failed to prove any essential element of these circumstances.

We held that abuse of superior strength is considered when there is a showing that the accused purposely employed superior strength to consummate the crime; that he used purposely excessive force out of proportion to the means of defense available to the person attacked.[23] In this case, while the appellant used a bolo, there is no evidence on record that he purposely used it precisely to commit the crime. In fine, the appellant is guilty only of homicide under Article 249 of the Revised Penal Code.

The penalty for homicide under the Revised Penal Code is reclusion temporal. There being no mitigating or aggravating circumstances attendant, the maximum of the indeterminate penalty shall be taken from the medium period of reclusion temporal. The minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, namely, prision mayor. Thus, the appellant may be sentenced to an indeterminate penalty ranging of from eight (8) years and one (1) day of prision mayor, in its medium period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period, as maximum.

Civil Liabilities of the Appellant

The trial court correctly awarded P50,000 by way of civil indemnity to the heirs of the victim Nazario Damian. However, the award of P50,000 for moral damages should be deleted, there being no proof that the heirs of the victim suffered wounded feelings, mental anguish, anxiety and similar injury. The said heirs are, however, entitled to an award of P25,000 as temperate damages, conformably to current jurisprudence.[24]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Quezon City, Branch 99, is AFFIRMED WITH MODIFICATIONS. The appellant Virgilio Reforma y Pedrigal is found GUILTY beyond reasonable doubt of Homicide under Article 249 of the Revised Penal Code, as amended by Rep. Act No. 7659

and is sentenced to suffer the indeterminate penalty of from Eight (8) years and One (1) day of prison mayor in its medium period, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day of reclusion temporal in its medium period, as maximum. The appellant is ORDERED to pay Fifty Thousand Pesos (P50,000) as civil indemnity and Twenty-Five Thousand Pesos (P25,000) as temperate damages to the heirs of the victim.

No costs.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Felix M. De Guzman.

[2] Exhibits “A” and “G,” respectively.

[3] Exhibit “B,” Records, p. 138.

[4] Exhibit “E,” Records, p. 142.

[5] Records, p. 1.

[6] Exhibit “3,” Id. at 215.

[7] Exhibit “1,” Id. at 213.

[8] Exhibit “2,” Id. at 214.

[9] Exhibit “4,” Id. at 216.

[10] Ibid.

[11] Records, pp. 238-239.

[12] Rollo, p. 148.

[13] Rollo, pp. 161-162.

[14] *People of the Philippines v. Jerryvie Gumayao y Dahao*, G.R. No. 138933, October 28, 2003.

[15] TSN, 17 May 1993, pp. 4-7.

[16] TSN, 21 September 1994, pp. 2-4.

[17] *People vs. Lagarto*, 326 SCRA 693 (2000).

[18] *People vs. Tabaco*, 270 SCRA 32 (1997).

[19] *Tan, Jr. vs. Court of Appeals*, 342 SCRA 643 (2000).

[20] *People vs. Santiago*, 342 SCRA 52 (2000).

[21] Ibid.

[22] Id.

[23] *People vs. Lucena*, 356 SCRA 90 (2001).

[24] *People vs. Delos Santos*, G.R. No. 135919, May 9, 2003.

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