

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONESIO SANTIAGO, JOHN DOE, RICHARD DOE, WILLIAM DOE, AND PETER DOE, ACCUSED. DIONESIO SANTIAGO, ACCUSED-APPELLANT.

G.R. No. 133445. February 27, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before this Court is an appeal from the decision[1] of the Regional Trial Court of Antique, Branch 13, convicting accused-appellant Dionesio Santiago of double murder, imposing on him the penalty of reclusion perpetua for each count and ordering him to indemnify the heirs of the victims in the sum of P50,000.00.

The Charges

Accused-appellant was charged of double murder in one information which reads:

The undersigned Assistant Provincial Prosecutor accuses Dionesio Santiago, John Doe, Richard Doe, William Doe and Peter Doe of the crime of Double Murder, committed as follows:

That on or about the 31[st] day of December, 1993, in the Municipality of Culaso, Province of Antique, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then armed with a bolo and a knife, conspiring, confederating and mutually helping one another, with intent to kill, evident premeditation, taking advantage of superior strength and night time, did then and there, willfully, unlawfully and feloniously attack, assault assault (sic) and stab with said bolo and knife Egmedio Carigay and Myrna Samsona, thereby inflicting fatal wounds on the different parts of their bodies which caused their instantaneous (sic) death.

Contrary to the provisions of Article 248 of the Revised Penal Code.[2]

Although he was charged of two crimes in one Information, accused-appellant did not file any motion to quash the same. During the arraignment, accused-appellant, assisted by counsel, entered a plea of Not Guilty.[3]

The Antecedent Facts[4]

Sometime in June 1993, Igmedio Carigay and accused-appellant, both residents of Barangay Batonan Sur, Culasi, Antique, had a quarrel over irrigation rights. They hacked each other, and as a result, sustained injuries. However, they settled their differences at the Citizen Armed Forces Geographical Units (CAFGU) detachment in the presence of CAGFU agent Pepito Calauod. On December 29, 1993, at about 7:00 p.m., six months after the altercation between Igmedio and accused-appellant took place, Pepito passed by the house of accused-appellant and heard him swear: “Indi matapos ang bulan nga dya, patyon ko si Igmedio Carigay.” (Before this month ends, I’ll kill Igmedio Carigay).

Two days later, or on December 31, 1993, at 5:30 p.m., Manuel Magsipoc, the brother-in-law of Igmedio, was at the latter’s house to borrow a sack of palay. Manuel stayed for about an hour, then left for his home. While he

was about fifty meters from the house of Igmedio, Manuel met a group of five men walking towards said house. Four of the men wore masks. The fifth, whom Manuel recognized as accused-appellant, did not. Accused-appellant was armed with a bolo in its scabbard. Manuel thought it odd that the companions of accused-appellant were wearing masks. Nevertheless, Manuel and accused-appellant greeted each other. Manuel continued on his way back home.

At around 8:00 p.m. that day, Bien Beloya was on his way to the house of Igmedio and the latter's live-in partner, Myrna Samsona, to partake of some food prepared by them for New Year's eve. Bien had carried a flashlight to illumine his way from his house to the house of Igmedio which was located in a farmland about two kilometers away from his house. Earlier, Igmedio and Myrna had invited Bien to spend New Year's eve with them and Bien had agreed. When Bien was about 20 meters from the house of the couple, near the fence thereof, he heard Myrna crying and pleading: "Please don't kill us." Bien tarried by the fence, and heard accused-appellant saying: "I will kill you all!" Again, Myrna pleaded, saying: "Please don't kill us." Accused-appellant and Bien knew each other very well. They used to fish at sea together. However, Bien had no idea why accused-appellant would threaten to kill Myrna.

Momentarily, Bien saw Igmedio running out of their house followed by accused-appellant and four other men. A petromax lamp lighted the house of Igmedio. Accused-appellant and his companions were armed with knives and bolos. Igmedio tripped and stumbled. Accused-appellant and his companions surrounded Igmedio and stabbed him. Bien stepped forward and hid behind a banana plant, about six arms length from where Igmedio was being stabbed. Bien was shocked by what he had just witnessed. Accused-appellant and his companions sensed the presence of Bien. Accused-appellant then said: "Who is that?" Bien instinctively replied: "I am Bien" and simultaneously flashed his flashlight on accused-appellant and his companions. Bien fled as fast as he could towards the direction of the CAFGU detachment in Batonan Sur along the national highway. However, accused-appellant and his companions ran after Bien and blocked his way. The latter detoured, ran upstream towards the river of Tigbobolo and on towards his house.

At around 4:00 a.m. the next day, accused-appellant arrived in the house of Bien and told the latter to go to San Jose and stay there. Accused-appellant warned Bien that accused-appellant, and his companions will kill him if Bien refused to obey. Fearing for his life, Bien did as told and fled posthaste to San Jose where he stayed for a week. As his conscience bothered him, Bien decided to report the incident to Manuel, the brother-in-law of Igmedio.

When apprised on January 6, 1994 that Igmedio and Myrna were already dead, CAFGU agent Pepito went to the house of the couple and saw them sprawled in the yard of the house, their bodies already in a state of decomposition. He entered the house of the couple and saw suman and cooked chicken. The police took pictures of the cadavers of the victims.[5]

When Manuel learned of the deaths of Igmedio and Myrna, he rushed to the house of the couple and saw their bodies with stab wounds. Their cadavers were already emitting foul odor.

On January 26, 1994, Dr. Roselyn Escantilla Babayen-on conducted an autopsy on the cadavers of Igmedio and Myrna. She prepared and signed two Medico-Legal Reports containing her findings, thus:

NAME: EGMEDIO (sic) CARIGAY

x x x x x x x x

FINDINGS:

The embalmed body was seen in a supine position with his upper and lower extremities slightly flexed.

Numerous maggots were seen all over the body and with a very foul odor. There is softening of the tissues in some portion particularly at the right upper chest and the face. Some of the bones of the face were prominent.

#1.

Stab wound, left anterior chest, 2.0 cm. in lengths, 4.0 cm. in depth, 13.0 cm. from the nipple line, at the level of the 3[rd] rib.

#2.

Stab wound, neck, left lateral area, 3.0 cm. in length (sic), 2.0 cm. in depth.

#3.

Stab wound, left shoulder, 2.0 cm. in length, 3.0 cm. from the shoulder joint, 1.5 cm. in depth.

#4.

Stab wound, left posterior chest, 2.1 cm. in length at the level of the 4[th] vertebra, mid-scapular line.

#5.

Stab wound, lower posterior chest, mid-vertebral line, 2.0 cm. in length, at the level of the 12[th] thoracic vertebra.

#6.

Stab wound, left lower chest, posterior area, 2.0 cm. in length, left paravertebral line.

#7.

Stab wound, left lumbar area, 3.0 cm. in length, 3.0 cm. from the midline at the level of the first lumbar vertebra.

#8.

Stab wound, right lumbar area, 2.3 cm. in length, at the level of the second lumbar vertebra, right paravertebral line.

#9.

Stab wound, right lumbar area, 2.2 cm. in length, at the level of the third lumbar vertebra, right paravertebral line.

x x x x x x x x

CAUSE OF DEATH:

Hypovolemic shock secondary to severe hemorrhage secondary to multiple stab wounds.” (Exhibit “A”)

x x x x x x x x

NAME: MYRNA SAMSONA

x x x x x x x x

FINDINGS:

The embalmed body was in supine position with her upper and lower extremities slightly flexed. Numerous maggots were seen all over the body and with a very foul odor. There is softening of the tissues in some portion particularly in the face.

#1.

Stab wound, nape area, 2.0 cm. in length, 2.0 cm. in depth, at the level of the 7[th] cervical vertebra.

#2.

Stab wound, posterior chest, 2.0 in length, mid-vertebral area at the level of the 4[th] thoracic vertebra.

#3.

Stab wound, lower posterior chest, 2.0 cm. in length, mid-vertebral area at the level of the 12[th] thoracic vertebra.

#4.

Stab wound, left lumbar area, 2.2 cm. in length, at the level of the first lumbar area.

#5.

Stab wound, lumbar area, 2.1 cm. in length, mid-vertebral line at the level of the second lumbar vertebra.

x x x x x x x x

CAUSE OF DEATH:

Hypovolemic shock secondary to severe hemorrhage secondary to multiple stab wounds.” (Exhibit “B”)

Dr. Babayen-on testified that the stab wounds may have possibly been caused by a sharp object like knife or bolo or “talibong.” It was also possible that the victims were killed by two or in more assailants. The victims had been dead more than 24 hours before the autopsy.

The Defense and Evidence of Accused-Appellant

Accused-appellant denied the charge. He testified that on December 31, 1993, at around 6:00 p.m., he arrived in the house of Arthur Alocilja which was located about a kilometer away from his house. He was requested by Arthur to slaughter a dog for the new year’s celebration. He was assisted by Eliza Cadapan in cooking the food for the guests. Accused-appellant stayed at the house of Arthur for about five hours, and at around 11:00 p.m. he and Eliza went to see a video show at a nearby house owned by Arthur’s mother. The testimony of accused-appellant was corroborated by Arthur and Eliza.

The Verdict of the Trial Court

On November 26, 1994, the trial court rendered a decision convicting accused-appellant of double murder, the decretal portion of which reads:

WHEREFORE, in view of the foregoing facts and circumstances, for the death of Igmedio Carigay and Myrna Samsona, this Court finds Dionisio Santiago, GUILTY beyond reasonable doubt, for the crime of Double Murder and hereby sentences him to suffer the penalty of RECLUSION PERPETUA for the death of Igmedio Carigay, likewise for him to suffer another penalty of Reclusion Perpetua for the death of Myrna Samsona, and to indemnify the heirs of victims Igmedio Carigay and Myrna Samsona in the amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency for each victims.[6]

Assignment of Errors

Accused-appellant interposed an appeal contending that:

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED AND PENALIZED UNDER ARTICLE 248 OF THE REVISED PENAL CODE AS AMENDED BY RA 7659.

The Verdict of this Court

Accused-appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt for the deaths of Igmedio and Myrna. He contends that the collective testimonies of Pepito and Manuel are incredible and hence, barren of probative weight. Accused-appellant argues that if indeed he was bent on killing Igmedio and Myrna, for sure, he should have worn a mask to conceal his identity. It was sheer foolhardiness that he did not. Accused-appellant further states that if Manuel met him and four other male persons, four of whom wore masks and all of whom were armed with knives and bolos, on his way to the house of Igmedio and Myrna, it is incredible that Manuel did not even try to prevent accused-appellant and his companions from going to the house of the victims and avert any physical harm to them. Equally barren of probative weight, accused-appellant insists, is the testimony of Bien that at a distance of 20 meters, he could hear Myrna pleading for mercy and accused-appellant threatening to kill the couple. Accused-appellant avers that he cannot be convicted of murder for the death of Myrna in view of the failure of the prosecution to present an eyewitness to the crime. He insists that it was impossible for Bien to have recognized the voice of accused-appellant because Bien was 20 meters away from the house of Igmedio. Even if Myrna and accused-appellant were shouting, the voice of accused-appellant would be different from his ordinary voice. In any event, accused-appellant contends, the prosecution failed to prove that he abused his superior strength in killing Igmedio and that he killed Myrna with treachery.

The contention of accused-appellant does not persuade the Court. At the heart of accused-appellant's submission is the credibility of Pepito, Manuel and Bien and the probative weight of their collective testimonies. In this case, the trial court gave credence and full probative weight to the collective testimonies of Pepito, Bien and Manuel. The Court has consistently held that the findings of facts of the trial court, its calibration of the collective testimonies of witnesses and probative weight thereof and its conclusions culled from said findings are accorded by this Court great respect, if not conclusive effect, because of the unique advantage of the trial court in observing and monitoring at close range, the conduct, deportment and demeanor of the witnesses as they testify before the trial court.[7] This principle does not apply if the trial court ignored, misunderstood or misconstrued cogent facts and circumstances of substance which, if considered, will unravel the truth and alter the outcome of the case. The Court has minutiously examined the records and the evidence adduced by the parties and is convinced that the findings and conclusions of the trial court on the criminal culpability of accused-appellant for the death of the victims are buttressed by said evidence.

It bears stressing that for the death of Igmedio, the prosecution presented Bien Beloya, an eyewitness to the crime. He narrated how accused-appellant and his four companions ganged up on the helpless Igmedio and stabbed him:

Q

Now Mr. Witness, when Dionesio Santiago exclaimed that he would kill them all and Myrna Samsona Carigay again pleaded to spare their lives, what then happened?

A

Egmidio (sic) Carigay went out of the door going outside.

Q

Now, when Egmidio (sic) Carigay went out of his house, of his door going outside, what was he doing, walking or running?

A

He was running outside.

Q

Aside from Egmidio Carigay whom you said you saw running outside of his house, were there any other person also going outside of the house?

A

Yes, sir, they followed him.

Q

When you said, they, whom are you referring to?

A

Dionesio Santiago and his group.

Q

How many were they?

A

There were four of them.

Q

Aside from Dionesio Santiago, there were four (4) companions of his?

A

Yes, sir.

Q

Now, Mr. Witness, this was nighttime, 8:00, how could you be certain or how could you identify Dionesio Santiago as among the group who ran after Egmidio Carigay?

A

There was a bright light.

Q

What kind of light was provided in that house?

A

A petromax.

Q

Now, what have you noticed in the person of Dionesio Santiago and his four (4) companions?

A

They were carrying knife and bolo.

Q

Now, Mr. Witness, you said, Egmidio Carigay ran going out of his house. Was he able to completely ran (sic) away from his house?

A

No, sir.

Q

Why, what happened to him?

A

He stumbled to the ground.

Q

Now, Mr. Witness, while Egmidio Carigay fell, stumbled to the ground, what then did these Dionesio Santiago and his four (4) other companions do?

A

They surrounded him.

Q

After Dionesio Santiago and his four (4) companions surrounded Egmidio Carigay when he stumbled, what did these Dionesio Santiago and his four (4) other companions do to Egmidio Carigay?

A

They stabbed him.

Q

Now, Mr. Witness, you said, they stabbed him, stabbed Egmidio Carigay. Do you want to impress upon this Honorable Court that this Dionesio Santiago together with his four (4) other companions helped in stabbing Egmidio Carigay, the five of them helped in stabbing Egmidio Carigay?

A

Yes, sir.

Q

Now, Mr. Witness, considering that you were about twenty (20) meters away from the house of Egmidio Carigay and when Egmidio Carigay ran out of the house, when he stumbled, how far away then was Egmidio Carigay from you when he stumbled and when he was surrounded and attacked by these five (5) together with Dionesio Santiago?

A

About six (6) arms length.

Q

Now, Mr. Witness, seeing all these things, this stabbing of Egmidio Carigay, the stabbing by Dionesio Santiago together with his four (4) companions of Egmidio Carigay, what then did you do?

A

I hid myself near a banana plant.

Q

For how long have you stayed or hidden yourself in that banana plant?

A

It did not take long.

Q

Thereafter, what then did you do?

A

I took one (1) step.

Q

Going towards what direction?

A

I peeped.

Q

What happened then?

A

I saw them.

Q

Now, Mr. Witness, when you peeped and saw them, who is “them” you are referring to?

A

Dionesio Santiago and his group.

Q

Now, Mr. Witness, thereafter, when you saw these Dionesio Santiago and his group, what again did you do?

A

He said, “Who is that?”

Q

Who said that?

A

Dionesio Santiago.

Q

To whom was it directed when he asked, “Who is that?”

A

I, sir.

Q

What then did you do when this question was directed to you, asking “who is that?”

A

I answered, “I am Bien,” simultaneously flashing my flashlight.

Q

Now, Mr. Witness, you said, you hid yourself. Why then did you identify yourself when they asked, “Who is that?”

A

I was shocked.

Q

Now, you said, you simultaneously, when answering your name, you flashed your flashlight at them. What then did these five (5) do, Dionesio Santiago and his group when you flashed your flashlight at them?

A

I fled because they seem to run after me.[8]

The trial court relied on the testimony of Bien and the physical evidence on record and not on the testimony of Manuel in finding accused-appellant guilty beyond reasonable doubt for the killing of Igmedio:

Although his (Beloya’s) testimony on the identity of Dionesio Santiago was uncorroborated, this Court believes that the same is sufficient. He had ample opportunity to unmistakably recognize the herein accused on the night of the incident because Beloya and the accused always see each other, the place was illuminated by a bright light coming from the petromax more so when Beloya flashlighted them, he saw and clearly identified Dionesio Santiago but his four armed companions could not be identified as they were not familiar to Beloya.[9]

x x x x x x x x

From the autopsy report, there is no doubt that the plurality of assassins is in existence because the evident proof that the commission of the crime was participated by more than one person is the numerous wounds that differentiate from each other suffered by the victims indicate plurality of the assailants. The testimony of Bien Beloya in this regard is supported by the autopsy report of the doctor.[10]

This Court is thus convinced that accused-appellant is criminally liable for the death of Igmedio.

The trial court declared that accused-appellant and his four companions abused their superior strength when they killed Igmedio:

In order for abuse of superior strength to be considered as qualifying circumstance, the testimony of Bien Beloya, an eyewitness must be given full credit. He testified on the actual nature and mode of the attack employed on the hapless victim Igmedio Carigay, much less to show that the said circumstance was

deliberately adopted to ensure the infliction of the fatal wounds. Furthermore, not to discount the strength of the testimony of Bien Belaya that he saw the respective or joint participation of accused Dionesio Santiago and his four (4) armed companions in assaulting the victim, much less that they took advantage of their superior strength. The testimony of the witnesses for the prosecution have shown that the accused “cooperated in such a way as to secure advantage from their superiority in number” (People vs. Gupo y Gayeta, G.R. 75814, 24 September 1990) vis-a-vis their victim. Abuse of superior strength likewise qualify the crime to Murder since it was clearly shown that there was “deliberate intent to take advantage of it.” (People vs. Sazon, G.R. 89684, 18 September 1990).[11]

The Court agrees with the trial court. Accused-appellant and his companions were armed with knives and bolos. They stabbed the victim even as he stumbled and fell to the ground. Accused-appellant and his companions took advantage of their numerical superiority and their knives and bolos in killing the victim. In a case involving a similar factual backdrop, this Court held that:

Nevertheless, it is clear that the crime was attended by the presence of an aggravating circumstance. It was committed with apparent abuse of superior strength. The victim was clearly overwhelmed by the combined efforts of all three (3) accused who do not only enjoy superiority in number, but also of weapons. The records reveal that the defenseless victim was held back by accused Torres, while co-accused Chua and Macaliag took turns in stabbing him. There was obviously abuse of superior strength since all three (3) accused acted in concert to accomplish their felonious designs against the unarmed victim. They purposely took advantage of their superior number and combined strength and force which was grossly out of proportion to whatever means of defense was available to the victim.[12]

The Court likewise agrees that treachery was not attendant in the commission of the crime. This is so because Bien did not see what occurred before Igmedio fled from his house with accused-appellant and his companions in hot pursuit. In the absence of conclusive proof on the manner in which the aggression against Igmedio was commenced, treachery cannot be appreciated as a modifying circumstance.[13] It bears stressing that treachery cannot be presumed. It must be proved with the same quantum of evidence as the crime itself. The prosecution failed to discharge its burden.

While it may be true that Igmedio was helpless and defenseless when he was stabbed to death, however, there is no evidence on record showing that at the time accused-appellant and his companions attacked or assaulted the victim in his house, they did so with treachery. In People vs. Cañete,[14] this Court held that:

In this connection it should be noted that the original assault was begun by a direct frontal attack and there was momentary struggle between the accused and the deceased before the first knife wound was inflicted on the thigh of the deceased; and it was at this point that the deceased turned to flee. Moreover, pursuit by the accused followed immediately, after the deceased started to run, and the assault was practically continuous from the beginning to the end. The fall of the deceased in the course of his flight must be considered to have been in the nature of a mere accident which did not materially change the conditions of the struggle. In every fight it is to be presumed that each contending party will take advantage of any purely accident development that may give him an advantage over his opponent in the course of the contest. It follows that alevosia cannot be predicated of this homicide from the mere fact that the accused overtook and slew the deceased while the latter was endeavoring to rise from the ground.[15]

With respect to the killing of Myrna, it is irrefragable that the prosecution failed to adduce direct evidence that accused-appellant killed her. However, direct evidence is not a condition sine qua non to prove the guilt of accused-appellant beyond reasonable doubt for said crimes.

In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. For circumstantial evidence to be sufficient as proof of the guilt of an accused, the prosecution must prove

the confluence of the following requisites:

(a)

There is more than one circumstance;

(b)

The facts from which the inferences are derived are proven; and

(c)

The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[16]

No general rule can be laid down as to the number of circumstances that must be adduced in evidence to prove the guilt of the accused. What is paramount is that all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent and with every rational hypothesis except that of guilt. The facts and circumstances must be such as are absolutely incompatible upon any reasonable hypothesis with the innocence of the accused and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused.[17] Circumstantial evidence is sufficient as basis for conviction if it constitutes an unbroken chain leading to one fair and reasonable conclusion proving that accused-appellant is the author of the crimes charge, to the exclusion of all others.[18] In the present case, the prosecution adduced sufficient circumstantial evidence to show that accused-appellant killed Myrna. As correctly stated by the trial court in its decision:

As to the death of Myrna Samsona, there is no doubt that the herein accused together with the four others which were not identified are responsible and have directly participated in the commission of the crime. The prosecution's witnesses testified that Dionesio Santiago together with his companions killed Igmedio Carigay. Likewise prior to that incident, they likewise killed Myrna Samsona. This is evident from the testimony of the witnesses for the prosecution. Adduced evidences proved beyond doubt that Myrna Samsona died as a result of multiple stab wounds caused by sharp edge objects, the same instruments used in the killing of Dionesio Santiago.

Admittedly, as far as the death of Myrna Samsona the prosecution is wanting of an eye witness to the incident in question, however, during the time the killing of Myrna Samsona was executed Bien Beloya overheard the moaning of a woman and pleading that they, referring to Igmedio and herself not to be killed. Bien Beloya testified that she (sic) is familiar of (sic) the voice of Myrna Samsona and likewise she (sic) is familiar of (sic) the voice of Dionesio Santiago when the latter said to the two (2) victims, "I will kill you all" (TSN, November 22, 1994 at p. 11). In other words, as far as the death of Myrna Samsona, the prosecution relied heavily on the evidence that established the identity and culpability of the herein accused when Bien Beloya testified that he heard Myrna Samsona pleading and that of the voice of Dionesio Santiago who was then determined to kill both victims in this case and thereafter he affirmed that he saw Dionesio Santiago came out of the house together with his four (4) companions and assaulting Igmedio Carigay. The testimony of Bien Beloya as far as the death of Myrna Samsona although derived from other source other than the eye witness account, yet, the act which is charged against Dionesio Santiago and his companions caused to prove a fact or series of facts which is the facts in issue, which as proof, it tend by inferences to establish the commission of the crime. The circumstances relied by the prosecution formed an unbroken chain to prove the culpability of accused Dionesio Santiago and his four other companions.[19]

Accused-appellant's submission that Bien could have mistaken the voice of accused-appellant for that of the felon who killed Myrna because the voice of one shouting is different from that made in a normal or ordinary tone does not persuade. In the first place, Bien never claimed when he testified that when accused-appellant said: "I

will kill you all,” the latter was shouting:

Q

Now, Mr. Witness, were you able to get inside the house of Egmidio Carigay that evening?

A

Not yet, sir.

Q

Why, Mr. Witness?

A

Because I observed outside.

Q

What have you observed then after you stayed there around the premises?

A

I overheard a woman talking, sir.

Q

What was that woman talking about?

A

I heard her saying that, “Please don’t kill us.”

Q

Now, Mr. Witness, could you tell this Honorable Court if you could recognize who is the owner of that voice pleading that they should not be killed?

A

Yes, sir.

Q

Whose voice was that?

A

Myrna Carigay.

Q

Now, Mr. Witness, after hearing those words of Myrna Carigay, pleading that they should not be killed, what then did you do?

A

I just observed and listened.

Q

Now, Mr. Witness, how far away were you in that listening position you have had from the house where you heard the voice of Myrna Carigay?

COURT INTERPRETER:

The witness here is pointing the distance from where he is seated to the Office of the Provincial Fiscal, about twenty (20) meters away, more or less.

PROSECUTOR ORCAJADA:

Q

After that, Mr. Witness, what happened next?

A

And then, I heard the voice of a man.

Q

What was that man saying?

A

“I will kill you all.”

Q

Could you recognize that voice?

A

Yes, sir.

Q

Who owns that voice telling that he would kill them all?

A

Dionesio Santiago.

Q

If you say, Dionesio Santiago, do you refer to Dionesio Santiago, the accused herein whom you identified awhile ago?

A

Yes, sir.

Q

Now, after hearing Dionesio Santiago exclaimed that he will kill them all, what then transpired next?

A

And then, the voice again of that woman followed that. "Please don't kill us."

Q

Could you tell this Honorable Court who owns that voice of a woman?

A

Myrna Carigay.[20]

Bien could not have mistaken accused-appellant's voice considering that both had known each other for a long time:

Q

For how long have you known this Dionesio Santiago?

A

It has been a long time since we meet each other frequently.

Q

If this Dionesio Santiago is inside the courtroom, would you kindly please point at him?

A

Yes, sir.

Q

Please point at him.

COURT INTERPRETER:

The witness at this juncture is pointing to a man seated on the public bench who stood up and gave his name as Dionesio Santiago.[21]

From December 8 up to December 31, 1993, the two always met each other because they used to fish at sea:

Q

From December 8, 1993 to December 31, 1993, did you meet Dionesio Santiago?

A

Yes, sir.

Q

From December 8, how many times?

A

We always see other because we used to fish at sea.[22]

Bien's identification of accused-appellant as the assailant through his voice cannot be disparaged. This Court held in *People vs. Reynaldo*[23] that identification by the voice of a person is an acceptable means of identification where it has been established that the witness and the accused had known each other for a number of years:

It is not necessary that the witness's knowledge of the fact to which he testifies should have been obtained in any particular manner, and he may testify to what he hears, feels, tastes, smells, or sees.

Thus, identification by the sound of the voice of the person identified has been held sufficient, and it is an acceptable means of identification where it is established that the witness and the accused had known each other personally and closely for a number of years. Here, the complainant testified that she had known appellant for seven years prior to the incident because he lived only a house away from theirs. Appellant himself admitted having known the complainant by name in the three to four years that he had stayed in Barangay Bambanan. As observed by the trial court, the complainant and appellant "were familiar with each other since they lived together in the same barangay [and] x x x the house of the complainant is barely ten arms length away from the house where the accused lived." Indeed, people in rural communities generally know each other both by face and by name, and may be expected to know each other's distinct and particular features and characteristics.[24]

Accused-appellant takes exception to the ruling of the trial court that the killing of Myrna was qualified by abuse of superior strength. The prosecution, accused-appellant argues, failed to adduce proof beyond reasonable doubt that abuse of superior strength qualified the crime. The trial court, for its part, ruled that accused-appellant who was armed with deadly weapon killed Myrna, a woman, with abuse of superior strength:

The prosecution has successfully proved that advantage of superior strength using excessive force out of proportion to the means of defense available to the person attacked and purposely “used in quality between the numbers, sizes and strength of the antagonist and that his notorious advantages were purposely sought for or used by the accused to achieve his end” (PP. vs. Carpio, et al., G.R. 82815-16, 31 October 1990) Not to mention that one of the victims is a woman and under the principle of abuse of superior strength, such fact cannot be negated that superior strength can be appreciated against the accused in this case.[25]

The Court agrees with the trial court. Accused-appellant stabbed Myrna with a knife even as she pleaded for her life. In *People vs. Bohol*[26] this Court held that:

From the evidence, the manner in which accused-appellant killed the victim showed abuse of superior strength, not treachery. An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[27]

In the light of the evidence on record, accused-appellant is guilty of murder, defined in Article 248 of the Revised Penal Code, and not of homicide, for the deaths of Igmedio and Myrna.

The prosecution proved that the aggravating circumstance of dwelling was attendant in the commission of both crimes. However, dwelling was not alleged in the Information as an aggravating circumstance as required by Section 8, Rule 110 of the Revised Rules on Criminal Procedure, which reads:

Sec. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.[28]

Although the crime was committed before the effectivity of said rule, the latter is applied retroactively in the present case because it is more favorable to the accused.[29] Even if dwelling is proven but if it is not alleged in the information, it cannot aggravate the penalty for the crime.

Penalties on Accused-Appellant

The crimes for which accused-appellant is charged were committed before Republic Act 7659[30] took effect. Prior to its amendment by said law, Article 248 of the Revised Penal Code, imposed the penalty of reclusion temporal to death for the offense of murder. Since no aggravating or mitigating circumstance was attendant in the commission of the crimes, accused-appellant should be meted the medium period of the imposable penalty which is reclusion perpetua for each count of murder.

Civil Liability of Accused-Appellant

The trial court awarded the amounts of P50,000.00 each, or a total of P100,000.00 to the heirs of the victims as civil indemnity in both crimes. However, it did not award moral damages and exemplary damages to the heirs. The Court shall modify the awards.

Since the penalty imposed on accused-appellant is reclusion perpetua for each the two crimes, the heirs of the victims are respectively entitled to moral damages in the amount of P50,000.00, conformably with current jurisprudence. The heirs of each victim are also entitled to exemplary damages in the amount of P25,000.00, the prosecution having proved that dwelling aggravated the crimes. Article 2230 of the New Civil Code provides that if an aggravating circumstance is attendant in the commission of a felony, an award for exemplary damages is called for. Although dwelling was not appreciated against accused-appellant because of the retroactive application of Section 8, Rule 110 of the Revised Rules of Criminal Procedure, however, the right of, the heirs to exemplary

damages which had already become vested before the effectivity of said rules and hence, should not be prejudiced by such retroactive application.[31]

IN LIGHT OF ALL THE FOREGOING, the decision of the Regional Trial Court of Antique, Branch 13 is hereby AFFIRMED with MODIFICATIONS. Accused-appellant Dionesio Santiago is found guilty beyond reasonable doubt of Murder (two counts) under Article 248 of the Revised Penal Code. There being no modifying circumstances in the commission of the felonies, this Court hereby metes on him the penalty of RECLUSION PERPETUA for each count. Said accused-appellant is likewise ordered to pay the heirs of the victim Igmedio Carigay the amount of P50,000.00 as civil indemnity; the amount of P50,000.00 as moral damages and the amount of P25,000.00 as exemplary damages. He is also ordered to pay the said amounts to the heirs of the victim Myrna Carigay.

Costs de oficio.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing and Austria-Martinez, JJ., concur.

[1] Judge Antonio M. Natino.

[2] Original Records, Criminal Case No. C-137, p. 38.

[3] Original Records, p. 43.

[4] The prosecution presented Dr. Roselyn Babayen-on, Bien Beloya, Manuel Magsipoc, Pepito Calauod, as witnesses.

[5] Exhibits “C” to “C-2.”

[6] Original Records, Criminal Case No. C-137, p. 195.

[7] People vs. Platilla, 304 SCRA 339 (1999).

[8] TSN, Beloya, November 22, 1994, pp. 11-16.

[9] Original Records, p. 191.

[10] Ibid., p. 194.

[11] Id., pp. 193-194.

[12] People vs. Macaliag, 337 SCRA 502 (2000).

[13] Id., supra.

[14] 44 Phil. 478 (1923).

[15] Id., at 480.

[16] Revised Rules of Court, Rule 133, Sec. 4.

[17] People vs. Ludday, 61 Phil. 216 (1935).

[18] People vs. Bantilan, 314 SCRA 380 (2000).

[19] Original Records, pp. 191-192.

[20] TSN, Beloya, November 22, 1994, pp. 9-11, *supra*.

[21] TSN, Beloya, November 22, 1994, p. 7, *supra*.

[22] TSN, Beloya, November 22, 1994, p. 25, *supra*.

[23] 291 SCRA 701 (1998).

[24] *Ibid.*, pp. 711-712.

[25] Original Records, p. 85.

[26] 335 SCRA 501 (2000).

[27] *Id.*, p. 510.

[28] *Id.*, *supra*.

[29] *People vs. Onabia*, 306 SCRA 23 (1999).

[30] The Death Penalty Law.

[31] *People vs. Catubig*, 363 SCRA 21 (2000).

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