

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO FERNANDEZ @ “BONG DAGIS,” ACCUSED-APPELLANT.

G.R. No. 134762. July 23, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the decision dated March 13, 1998 by the Regional Trial Court of Malabon, Metro Manila, Branch 72, in Criminal Case No. 18339-MN, convicting appellant Romeo Fernandez a.k.a. “Bong Dagis,” of murder and imposing upon him the penalty of reclusion perpetua, and sentencing him to pay the heirs of the victim the sum of P50,000 as civil indemnity, P35,000 as actual damages, P50,000 as moral damages, and to pay the costs.

The facts of the case are culled from the records.

In an information dated August 20, 1997, appellant Romeo Fernandez was indicted for murder, allegedly committed as follows:

That on or about the 10th day of November 1996, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill, treachery and evident premeditation, did then and there wilfully (sic), unlawfully and feloniously attack, assault and stab with the said bladed weapon one DANILO BATES y CUASAY, hitting the victim on the different parts of his body, thereby inflicting upon the victim multiple stab wounds which caused his immediate death.

CONTRARY TO LAW.[1]

On September 26, 1997, appellant was arraigned and with assistance of counsel pleaded not guilty. He waived pre-trial, and thereafter trial ensued.

According to the testimonies of prosecution witnesses, on November 10, 1996, at around 8:00 P.M., Thelma Bates, mother of the victim, Danilo Bates, left her house in Davila Street, West Navotas, Navotas, Metro Manila, to look for her son. Danilo Bates was a book company representative tasked with delivering books to various provinces.[2] Usually after returning from a long trip, he would go out of their house to meet with his friends. That fateful night was no exception. Mrs. Bates found him conversing with a certain Uric and one Manny in front of the house of one Aling Paz, on Davila Street.[3] She asked Danilo to come home with her, as she wanted to sleep already. He said he would follow shortly.

At around 11:00 P.M. that night, Mrs. Bates went out again to fetch Danilo. However, he was no longer in front of Aling Paz’s residence. Instead, she found him lying on a stone bench at the end of an alley at the back of the house of Aling Paz. He was being stabbed by appellant, Romeo Fernandez. Mrs. Bates was only four or five meters away from the two and clearly saw appellant stab her son in his chest at least three times. The scene was illuminated by the light from a nearby house. She was so shocked she could not move. Appellant swiftly fled from the scene of the crime.

Assisted by some neighbors, Danilo was rushed to the Tondo Medical Center. While on the way to the hospital, Mrs. Bates heard Danilo mention “Dagis,” the appellant’s alias. Danilo died from multiple stab wounds an hour after reaching the hospital.[4]

Dr. Maria Cristina B. Freyra, of the Philippine National Police Crime Laboratory, autopsied Danilo’s corpse. Her findings, which were not contested by the defense, showed that Danilo died from “multiple stab wounds, trunk.”[5]

Appellant denied any involvement in Danilo’s death. He claimed he was at home during the incident, putting his children to sleep. His home was only a few hundred meters away from the scene of the crime. According to his testimony, he was supposed to be out fishing that night but the fishing boat had engine trouble and he went home instead. He did not leave his house until 6:00 A.M. the following day.[6]

Appellant declared that he never met the victim. However, he was acquainted with Mrs. Bates whom he called “Nanay.” After Danilo’s death, he saw her several times at a place in their neighborhood where she was wont to gamble. She gave no indication that she suspected him of being her son’s killer. When he was taken into custody, the police did not inform him of the reason for his arrest. He likewise denied changing his residence from November 10, 1996, until his arrest on August 16, 1997.[7]

The defense presented Rosenda Fernandez, appellant’s wife, to corroborate appellant’s alibi.[8]

Mrs. Bates was recalled to the witness stand on rebuttal. She denied meeting appellant after her son’s death. She insisted that appellant went into hiding after the incident prompting her to seek assistance from barangay officials. She stressed that at one time, the barangay captain went to appellant’s house, which was built over the sea and could only be reached by passing through a series of crisscrossing, winding gangplanks. Appellant jumped into the sea to avoid capture.[9]

Appellant then took the stand anew as a sur-rebuttal witness. He denied all the statements made by Mrs. Bates in her rebuttal testimony.[10]

The trial court found appellant’s defense of denial and alibi neither convincing nor satisfactory. It decided the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Romeo Fernandez guilty of the crime charged against him in this case, which is murder. In the absence of any generic aggravating or mitigating circumstance, said accused is hereby sentenced to suffer the prison term of reclusion perpetua.

Accused Fernandez is also ordered to pay Thelma Bates the sum of P35,000.00 representing the actual expenses incurred by her in connection with the death and burial of the victim, plus P50,000.00 by way of indemnification for the loss of the victim’s life and another sum of P50,000.00 by way of moral damages for the pain and sorrow suffered by her due to the untimely death of her son who is the victim in this case.

Costs against the accused.

SO ORDERED.[11]

Hence, the present appeal with the following lone assignment of error:

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER WITHOUT HIS GUILT HAVING BEEN PROVED BEYOND A REASONABLE DOUBT.[12]

The crucial issue in this appeal pertains to the credibility of the prosecution’s lone eyewitness. Appellant asks that his appeal be considered as an exception to the well-entrenched rule that findings of trial courts pertaining to the

credibility of witnesses will not be interfered with by appellate courts.[13] He submits that the trial court overlooked or misconstrued certain facts or circumstances of weight, which if considered, might affect the result of the case. More particularly, he insists that a careful perusal of the testimony of Thelma Bates would reveal marked contradictions, implausibilities, and improbabilities, rendering it both suspect and incredible.

First, appellant points out that while Mrs. Bates claimed that she was only four to five meters away from her son when he was stabbed and the place was well lighted, she nonetheless could not describe the weapon used. According to appellant, her inability to describe the murder weapon casts doubt on her account.

For the appellee, the Office of the Solicitor General contends that Mrs. Bates' inability to identify the murder weapon is a minor and peripheral matter, which cannot affect her declaration that she saw appellant stab her son. What is crucial in her testimony is the positive identification of appellant as the malefactor.

Considering the evidence and the arguments presented by the appellant and appellee, the records show that the victim died from multiple stab wounds. This is consistent with Mrs. Bates' declaration that she saw appellant stab Danilo several times at the dead end of an alley in Davila Street, Navotas. Her testimony is thus materially corroborated by the autopsy conducted on the deceased. It having been established that the victim died from multiple stab wounds, the failure of Mrs. Bates to identify or describe the weapon used is of no consequence and cannot diminish her credibility.[14] For one, witnesses are not expected to remember every single detail of an incident with perfect or total recall. For another, what is vital in her testimony is not her knowledge of the weapon used, but that she saw appellant stabbing the victim. The presentation of the murder weapon is not indispensable to the prosecution of an accused.[15] The non-identification or non-presentation of the weapon used is not fatal to the prosecution's cause where the accused was positively identified.[16]

Second, appellant assails Mrs. Bates' claim that the incident occurred at the dead end of the alley where her son was sleeping and that she saw appellant immediately leave the crime scene. He points out that if her story were true, he should, by force of circumstance, have seen her as he would have to pass her in exiting the alley where the incident occurred.

There is nothing in the records, however, that would support appellant's claim that in fleeing from the scene of the incident, he had nowhere to pass except where Mrs. Bates stood. Moreover, appellant's testimony that he did not see Mrs. Bates is purely self-serving. For him to admit that he did see her would have been fatal to his defense. His second argument thus deserves but scant consideration.

Third, appellant argues that Mrs. Bates' testimony is incredible and repugnant to the common experience and observation of mankind since she failed to shout for help on seeing her son being stabbed. According to appellant, her claim that she was shocked into immobility by the sight is incredible, to say the least.

It is unfair to gauge the action of Thelma Bates as "incredible" for there is no prescribed behavior when one is suddenly confronted with a startling or frightening event. Different people react differently to a given stimulus or situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[17] Her inability to scream for help was understandable. She was simply shocked into immobility by a violent and tragic tableau that suddenly met her eyes.

Fourth, appellant points out that it took Mrs. Bates all of nine months and four days to report the incident to the police and to execute a sworn statement implicating appellant. This unexplained delay damages her credibility, according to appellant, in view of the absence of any showing that he threatened to harm Mrs. Bates or any member of her family should she report him to the authorities.

Appellant's allegation that it took Mrs. Bates over nine months to report the fatal stabbing of her son to the

authorities is not entirely correct. The transcripts show that she brought the incident to the attention of the barangay authorities, not just once but twice, but to no avail as appellant was at large.[18] The records likewise show she did not file her sworn declaration against appellant until the latter was in custody.[19] Note that while the incident took place on November 10, 1996, appellant was apprehended only on August 16, 1997.[20] Appellant's allegation that it took Mrs. Bates more than nine months to make a criminal accusation against him before the police is, thus, correct. However, delay in reporting the crime or identifying the malefactors does not affect the credibility of a witness for as long as the delay is sufficiently explained.[21] When the police queried Mrs. Bates why she waited until appellant was arrested before filing her complaint with them, she disclosed that she feared appellant might kill her, too.[22] Fear of reprisal has been accepted by this Court as an adequate explanation for the delay or vacillation in filing criminal charges.[23] The delay in making the criminal accusation having thus been explained, her credibility as a witness remains unimpaired.

Fifth, appellant argues that Mrs. Bates' credibility is further put into doubt since her statement that she saw appellant stabbing her son in the chest is contradicted by the autopsy findings that Danilo sustained stab wounds in the trunk.

The OSG contends that there is no contradiction between Mrs. Bates' testimony that Danilo was stabbed in the chest and Dr. Freyra's findings that Danilo's death was caused by multiple stab wounds on the trunk. It submits that the chest is a part of the trunk, which has been defined as "a human or animal body, not including the head and limbs." [24]

Appellant's attempt to discredit Mrs. Bates by seeking to distinguish between chest stab wounds and trunk stab wounds is an exercise in futility. As correctly pointed out by the Solicitor General, the term "trunk" includes the chest, for the trunk is "the human body apart from the head and appendages." [25] Perforce, stab wounds in the trunk will necessarily include stab wounds in the chest.

Sixth, appellant faults Mrs. Bates' testimony for being biased as it was not corroborated by the testimonies of other witnesses whom she claimed also saw the stabbing incident. He theorizes that the failure of the prosecution to present the other eyewitnesses would have an adverse result to its cause.

We note that Mrs. Bates did disclose that other people witnessed the incident. However, she clarified that these other witnesses did not want to testify.[26] For this refusal, she should not be blamed nor her testimony be sweepingly branded as biased. More often than not, witnesses tend to be reluctant about volunteering information concerning a criminal case or being involved in a criminal investigation.[27]

Nor should the prosecution's failure to present additional witnesses to corroborate Thelma's sole eyewitness account damage its cause. It is, after all, the prerogative of the prosecution to decide how to conduct its case, and this includes the number of witnesses it may choose to present.[28] The failure of the prosecution to present corroborative witnesses does not necessarily lead to the conclusion that the testimony of said witnesses, if presented, would have adverse consequences to its cause.[29] After all, these witnesses are just as available to the defense for presentation, should it so desire.

Finally, appellant points to certain perceived inconsistencies and contradictions in Mrs. Bates' account which, according to him, are sufficient to destroy her credibility, viz.: (1) She declared on direct examination that she went out of her house at 8:00 P.M. to look for her son. On cross-examination, however, she declared that she went out of her house the first time at 11:00 P.M. She then changed her answer that it was for the second time when she went out at 11 o'clock that night; (2) Her statements on direct and cross-examination that there were other people who witnessed the incident are contradictory. On direct examination, she claimed that other people witnessed the crime but refused to be involved, but on cross-examination, she declared that the place was deserted when the

incident happened; and (3) Her statements on the lighting at the locus criminis likewise do not dovetail. On direct examination, she averred that the place was well lighted, but on cross-examination, she said the lights from the nearby houses were already turned off at the time the crime occurred.

We find, however, that these supposed inconsistencies refer to minor and inconsequential details and a calibration of Mrs. Bates' testimony on the whole shows that there is consistency as to the principal occurrence and the positive identification of the perpetrator. It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and indicate that the witness was not coached to fabricate or dissemble.[30]

Nonetheless, it must be stressed that appellant's perceptions as to the alleged inconsistencies are not entirely accurate. First, Mrs. Bates did not testify on direct examination that the first time she went out looking for her son was at eight o'clock in the evening of November 10, 1996. On direct examination, she declared that she went out at 11 in the evening to bring her son home.[31] It was on cross-examination that she had the opportunity to clarify the series of events that took place that night. Thus, she explained she went out twice that night: the first time at 8:00 P.M. when she went to tell her son to come home as she already wanted to sleep, and the second time at 11:00 P.M. to "fetch" her son.[32]

Nor is there any contradiction between her testimony on direct examination that there were other people who witnessed the incident and her declaration on cross-examination that the crime scene was deserted. Mrs. Bates never claimed on direct examination that the other people who saw the incident were with her in the alley.[33] The presence of other witnesses cannot be discounted because there were several houses along the alley, near the scene of the crime. Recall also that she stated that after her son was stabbed "people started to come out." [34] She could have learned about such witnesses after the people came out to help her and the victim.

With respect to her testimony on direct examination that she was able to identify appellant because of "a light coming from a nearby house," [35] said declaration does not run counter to her statement on cross-examination that "the lights from nearby houses were already turned off." [36] Note that she never stated that all the lights in the nearby houses were already off. Moreover, in the latter part of her cross-examination, she averred that the crime scene was not dark. There was light coming from a nearby house.[37]

The trial court judge who had the opportunity to observe her demeanor and conduct on the witness stand gave full faith and credit to Mrs. Bates' testimony. We cannot do otherwise. Appellant has failed to point to any fact or circumstance which the court a quo overlooked or misconstrued which could destroy the veracity and truthfulness of her testimony. Witnesses are weighed, not numbered, and the testimony of a lone eyewitness, if found positive and credible by the trial court is sufficient to support a conviction.[38]

Against her positive identification, all appellant can offer is the inherently weak defense of denial and alibi. His defense has no leg to stand on. For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the locus criminis at the time of its commission.[39] Appellant's own evidence shows that he was in the immediate environs when the fatal stabbing occurred. In fact, his house was just a few hundred meters away from the crime scene. Positive identification, where categorical and consistent, and absent proof of any ill-motive on the part of the eyewitness testifying on the matter, prevails over denial and alibi, which are not substantiated by clear and convincing proof.[40] Hence, this appeal must fail.

But was the crime committed murder or homicide?

In finding appellant guilty of murder qualified by treachery, the court a quo observed:

In fine, the Court is of the view and so holds that the prosecution was able to establish by its own evidence the guilt of the accused in this case. It does not matter that (Thelma) Bates did not see how the incident started. The killing thru the infliction of stab wounds on the body of the victim while the latter was sleeping is, definitely, characterized by treachery.[41]

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[42] It is settled that there is treachery if the victim, when killed, was sleeping[43] or had just awakened,[44] because in such cases the victim was in no position to put up any form of defense. However, the prosecution must still establish how the attack commenced.[45] When Mrs. Bates went out of the house to call Danilo, she saw appellant already attacking her son who was lying on the bench. She claimed that her son was sleeping, but presented no evidence to show that he was actually asleep when attacked and thus had no opportunity to defend himself. Where no particulars are known regarding the manner in which the aggression was made or how the act which resulted in the victim's death began and developed, it cannot be established from mere supposition that the accused perpetrated the killing with treachery.[46] Any doubt as to the existence of the treachery must be resolved in favor of the accused.[47][47]

Note that the information also alleged "evident premeditation." Our perusal of the records, however, fails to disclose any factual basis for the aggravating circumstance of evident premeditation. Evident premeditation may not be appreciated where there is no proof as to how and when the plan to kill was hatched or the time that elapsed before it was carried out.[48] The premeditation must be evident and not merely suspected. Absent treachery and evident premeditation, the crime committed is homicide, not murder.

Homicide is penalized under the Revised Penal Code by reclusion temporal. There being no aggravating or mitigating circumstances present in this case, the penalty prescribed by law shall be imposed in its medium period.[49] The time included in reclusion temporal in its medium period is from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the imposable penalty shall range from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

The trial court awarded actual damages in the amount of P35,000 to Thelma Bates. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof, and on the best evidence obtainable by the injured party.[50] Our review of the entire record fails to disclose such credible and satisfactory evidence. Mrs. Bates admitted she did not keep any of the receipts.[51] The award of actual damages to her must, therefore, be deleted.

WHEREFORE, the decision of the Regional Trial Court of Malabon, Metro Manila, Branch 72 in Criminal Case No. 18339-MN is hereby AFFIRMED with MODIFICATION. Appellant ROMEO FERNANDEZ alias "BONG DAGIS" is found guilty beyond reasonable doubt of homicide and is sentenced to a prison term of ten (10) years and one (1) day of prision mayor as minimum, to fourteen (14) years, ten (10) months, and twenty (20) days of reclusion temporal as maximum. Appellant is also ordered to pay the victim's mother, Thelma Bates, the amount of P50,000 as civil indemnity and P50,000 as moral damages, but the award of actual damages in the sum of P35,000 is deleted. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Corona, JJ., concur.

- [1] Records, p. 2.
- [2] TSN, November 14, 1997, p. 3.
- [3] TSN, November 21, 1997, pp. 3-5.
- [4] Supra, note 2 at 9.
- [5] Exhibit “B” and sub-markings, Supra, note 1 at 16.
- [6] TSN, January 9, 1998, pp. 5-6; TSN, January 16, 1998, pp. 5-7.
- [7] Id. at 7-10; Id. at 2-5.
- [8] TSN, January 30, 1998, pp. 4-6, 8-10.
- [9] TSN, February 6, 1998, pp. 2-5.
- [10] TSN, February 13, 1998, pp. 2-4.
- [11] Supra, note 1 at 39-40.
- [12] Rollo, p. 42.
- [13] People vs. Mendoza, G.R. No. 128890, 332 SCRA 485, 494 (2000), citing People vs. Llaguno, G.R. No. 91262, 285 SCRA 124 (1998).
- [14] People vs. Rios, G.R. No. 132632, 333 SCRA 823, 832 (2000).
- [15] People vs. Mumar, G.R. No. 123155, 333 SCRA 221, 230 (2000), citing People vs. Atanacio, G.R. No. L-39211, 128 SCRA 22 (1984).
- [16] People vs. Tanzon, G.R. No. 129793, 320 SCRA 762, 772 (1999).
- [17] People vs. Monieva, G.R. No. 123912, 333 SCRA 244, 252 (2000), citing People vs. Luzorata, G.R. No. 122478, 286 SCRA 487 (1998).
- [18] TSN, February 6, 1998, pp. 3, 5-6.
- [19] Id. at 6.
- [20] His arrest appears to have been in connection with another offense. See Exhibit “C,” Records, p. 17.
- [21] People vs. Arlalejo, G.R. No. 127841, 333 SCRA 604, 612 (2000), citing People vs. Agsunod, Jr., G.R. No. 118331, 306 SCRA 612 (1999), People vs. Reduca, G.R. Nos. 126094-95, 301 SCRA 516 (1999), People vs. Banela, G.R. No. 124973, 301 SCRA 84 (1999).
- [22] Exhibit “A,” Records, p. 15.
- [23] People vs. Navales, G.R. No. 112977, 266 SCRA 569, 588 (1997), citing People vs. Peran, G.R. No. 95259, 215 SCRA 152 (1992).
- [24] Citing WEBSTER’S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE 641 (1987).
- [25] WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED) 2456 (1993 ed.)
- [26] TSN, November 14, 1997, p. 9.
- [27] People vs. Rubio, G.R. No. 118315, 257 SCRA 528, 534 (1996), citing People vs. Caraig, G.R. No. 91162,

202 SCRA 357 (1991).

[28] *People vs. Gomez*, G.R. No. 132171, 332 SCRA 661, 669 (2000), citing *People vs. Requiz*, G.R. No. 130922, 318 SCRA 635 (1999).

[29] *People vs. Nabunat*, G.R. No. 84392, 182 SCRA 52, 56 (1990).

[30] *People vs. Muyco*, G.R. No. 132252, 331 SCRA 192, 199 (2000), citing *People vs. Atad*, G.R. No. 114105, 266 SCRA 262 (1997).

[31] TSN, November 14, 1997, p. 4.

[32] TSN, November 21, 1997, pp. 5-6.

[33] *Supra*, note 31 at 9.

[34] *Supra*, note 32 at 9.

[35] *Supra*, note 31 at 6.

[36] *Supra*, note 32 at 7.

[37] *Id.* at 8.

[38] *People vs. Listerio*, G.R. No. 122099, 335 SCRA 40, 51(2000), citing *People vs. Quijon*, G.R. No. 103506, 325 SCRA 453, 462 (2000).

[39] *People vs. Suitos*, G.R. No. 125280, 329 SCRA 440, 448 (2000), citing *People vs. Henson*, G.R. No. 116732, 270 SCRA 634 (1997).

[40] *People vs. Orbita*, G.R. No. 122104, 322 SCRA 321, 327 (2000).

[41] *Rollo*, p. 19.

[42] *People vs. Orio*, G.R. No. 128821, 330 SCRA 576, 586-587 (2000), citing Art. 14, REVISED PENAL CODE; *People vs. Ybeas*, G.R. No. 98062, 213 SCRA 793 (1992).

[43] *People vs. Cotas*, G.R. No. 132043, 332 SCRA 627, 640 (2000), citing *People vs. Evangelista*, G.R. Nos. 84332-33, 256 SCRA 611 (1996), *People vs. Caringal*, G.R. No. 75368, 176 SCRA 404 (1989).

[44] *People vs. Cotas*, *supra*, citing *People vs. Atencio*, No. L-22518, 22 SCRA 88 (1968), *People vs. Yadaon*, No. L-1562, 82 Phil. 160 (1948).

[45] *People vs. Gaviola*, G.R. No. 126125, 327 SCRA 580, 585-586 (2000).

[46] *People vs. Orcula, Sr.*, G.R. No. 132350, 335 SCRA 129, 144 (2000), citing *US vs. Pangilion*, No. 11480, 34 Phil. 786 (1916), *US vs. Perdon*, No. 1692, 4 Phil. 141 (1905).

[47] *People vs. Santos*, G.R. No. 122935, 332 SCRA 394, 401 (2000), citing *People vs. Bahenting*, G.R. No. 127659, 303 SCRA 558 (1999).

[48] *People vs. Tortosa*, G.R. No. 116739, 336 SCRA 604, 613 (2000), citing *People vs. Medina*, G.R. No. 113691, 286 SCRA 44 (1998), *People vs. Timblor*, G.R. No. 118939, 285 SCRA 64 (1998).

[49] REV. PENAL CODE, Art. 64 (1).

[50] *People vs. Samolde*, G.R. No. 128551, 336 SCRA 632, 654 (2000), citing *People vs. Suelto*, G.R. No.

103515, 316 SCRA 283 (1999).

[51] TSN, November 21, 1997, p. 9.

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