PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FILOMENO BARNUEVO, DEMETRIO PALACAT, AND TERESITO SABALZA, ACCUSED-APPELLANTS.

G.R. No. 134928. September 28, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Pursuant to Section 13, Rule 124 of the Rules on Criminal Procedure, the Court of Appeals certified and elevated this case to us and refrained from entering its decision[1] of 12 August 1998, which affirmed the conviction of accused-appellants Filomeno Barnuevo (hereafter FILOMENO), Demetrio Palacat (hereafter DEMETRIO), and Teresito Sabalza (hereafter TERESITO) of the crime of Murder, and increased the penalty to reclusion perpetua and the indemnity to P50,000. We accepted the appeal in our resolution of 14 September 1998.

Accused-appellants were tried under an Information,[2] dated 20 December 1983, whose accusatory portion reads as follows:

> That on or about the 2[nd] day of December 1983, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, without provocation and taking advantage of superior strength, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously with accused Demetrio Palacat attack, assault, stab and wound one LEOPOLDO NACMAN, with the use of short bladed weapon with which the said accused provided himself for the purpose, while the other two accused, namely, Filomeno Barnuevo and Bobong Sabalsa boxed the deceased Leopoldo Nacman, with wounds which caused his death a few days thereafter.

Upon their arraignment on 31 March 1984 each of them entered a plea of not guilty. Trial on the merits followed.

From the testimonies of the witnesses for the prosecution, the following facts were established:

At 7:00 p.m. of 2 December 1983, eyewitness Mauro Valdez was sitting at the fence of his house in Barangay Sta. Fe, Abuyog, Leyte. At that time, Eduardo Zarzua, another eyewitness who was also a resident of the said barangay, was in the store of Juanito Costin buying kerosene.[3]

Mauro and Eduardo heard Erlinda Corbes shout "That's enough!" as she was standing in the middle of the road, six meters away from the house of Mauro. Mauro went near and saw Leopoldo Nacman (hereafter LEOPOLDO) being attacked by the three appellants. Mauro and Eduardo saw LEOPOLDO being boxed and kicked on different parts of the body by FILOMENO and TERESITO, and being stabbed several times by DEMETRIO with a Batangas knife. LEOPOLDO fell down, then got up, knelt down, raised his hands and pleaded for the three to stop. However, DEMETRIO kicked him causing LEOPOLDO to fall again, face down. Mauro chased the three but was unable to overtake them; so he returned to the scene of the crime. LEOPOLDO was brought to the hospital in a tricycle by several people.[4]

Mauro and Eduardo saw the events that transpired that fateful night because the place was illuminated by the light from the stores of Erlinda Corbes and Rosario Costin.[5] It was not difficult for them to recognize the culprits because they knew the latter. Mauro had known DEMETRIO since childhood; and so had Eduardo, who is DEMETRIO's distant cousin. Both Mauro and Eduardo knew TERESITO, as well as FILOMENO, who is the brother-in-law of DEMETRIO.

Emma Cantilang Nacman, the widow of the victim LEOPOLDO, testified that on 2 December 1983, LEOPOLDO was stabbed in Barangay Sta. Fe, Abuyog, Leyte, and was later brought to the Abuyog Hospital. She asked her husband the following day about his condition. He answered that he did not know whether he would survive. When asked who had inflicted the wounds on him, he categorically answered that DEMETRIO, FILOMENO and TERESITO were the ones who attacked him. On 11 December 1983, LEOPOLDO died.[6]

Emma further stated that before his untimely death LEOPOLDO was the captain of a fishing boat owned by one Ocaña, and his share of the catch amounted to P1,000 a month or not less than P40 a day. They had three children, one in high school and the other two in the elementary grades.[7]

Dr. Josenilo E. Bunado, resident physician of Abuyog Hospital, testified[8] that he treated LEOPOLDO and issued a Medical Certificate which contains his findings, to wit:

> Stab wound, 1 inch (L), sub-cut, deep, inferior aspect of (R) areola, directed superficially upward.
>
> Stab wound, 1 inch (L) x 4 inches deep, (R) axilla directed antero-medially.
>
> Stab wound, 1 inch (L) 8[th] ICS, (L) anterior axillary line, directed medially & downward, penetrating throracic and abdominal cavity, with prolapsed omentum, perforating transecting directing colon through & through.
>
> Stab wound, 1&1/4 inch (L). (R) Lumbar area, directed antiriously, penetrating abdominal cavity, penetrating kidney.
>
> Lacerated wound, 1cm L, upper leg, (L) lateral aspect.
>
> POST-OPERATIVE FINDINGS:
>
> Stab wound on the chest abdominal cavity, penetrating thoracic & perforating decending colon T & T at the level of the 8[th] ICS, anterior axillary line.
>
> Stab wound on the rt. Lumbar area penetrating abdominal cavity penetrating rt. Kidney.
>
> OPERATIONS PERFORMED:
>
> explor lap., repair of diaphram, colorraphy, nephrectomy, drainage.

The cause of his death was septicemia peritonitis secondary to multiple stab wounds in the chest and abdomen.[9]

The defense presented as its witnesses the three appellants, as well as Sofronia Padero, Susano Taringue, Ricardo Taride and Romeo Tan.

Sofronia Padero testified that on 2 December 1983, at 7:00 p.m., she went to the store of Leon Cua at Barangay Sta. Fe, Abuyog, Leyte, to buy kerosene. On her way back home, she saw LEOPOLDO near the stores of Erlinda Corbes and Juanito Costin, shouting that he wanted to fight. The stores were lighted with electric lights. At a distance of six meters, she saw LEOPOLDO chase a tricycle, but he was unable to overtake it as it was running at high speed. LEOPOLDO was able to reach the house of a certain "Cuyong" where he challenged everyone to a fight. At this time, the appellants passed by. LEOPOLDO grabbed FILOMENO and boxed him, causing the latter

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to fall face down. He then pulled out a short-bladed weapon locally known as "pisao" and attempted to stab FILOMENO. Upon seeing this, DEMETRIO grabbed the hand of LEOPOLDO. At this point, Sofronia and TERESITO ran away.[10]

Susano Tarinque and TERESITO testified that on 2 December 1983 they were with DEMETRIO and FILOMENO on their way to attend the birthday party of Romeo Tan at Bgy. Tab-oc, Abuyog, Leyte. To get there they had to pass by Bgy. Sta. Fe, Abuyog, Leyte. While they were in Bgy. Sta. Fe, they stopped at the store of Costin to buy cigarettes. While the cigarettes were being handed to Susano, they heard a thudding sound and saw FILOMENO fall down face up and being kicked by LEOPOLDO. Then they saw LEOPOLDO draw a pisao and about to stab FILOMENO. DEMETRIO grappled with LEOPOLDO for the possession of the pisao. At this juncture, he and TERESITO ran away.[11]

FILOMENO testified that he is the brother-in-law of DEMETRIO, being married to the latter's sister. In the evening of 2 December 1983, he and his co-appellants, as well as Susano Tarinque, were on their way to celebrate the birthday of Romeo Tan. While they were passing by Bgy. Sta. Fe, they heard someone shouting for a fight and saw a person standing by the road. This person, whom they did not recognize as it was dark, suddenly boxed him, hitting him in his right temple and causing him to fall down and become unconscious. When he regained consciousness, he ran away towards Romeo's house. He no longer saw his other companions. FILOMENO further testified that as a result of the fist blow his temple became swollen. He also sustained an injury on his right leg because the assailant, LEOPOLDO, kicked it.[12]

Romeo Tan, another brother-in-law of DEMETRIO, testified that on 2 December 1983, the appellants and Susano Tarinque were supposed to come to his house as it was his birthday. Only FILOMENO arrived; he was breathless while telling Romeo that he was boxed on the right cheek and kicked on his knee by LEOPOLDO. Thereafter, policemen arrived and brought FILOMENO to the police department.[13]

DEMETRIO testified that in the early evening of 2 December 1983 he, together with his co-appellants and Susano Tarinque, went to Bgy. Nalibunan to attend the birthday celebration of Romeo Tan. While passing by Bgy. Sta. Fe, LEOPOLDO waylaid them and forthwith boxed FILOMENO, who then fell down, face up. Upon seeing LEOPOLDO draw a pisao and about to thrust it on FILOMENO, DEMETRIO applied judo blows on LEOPOLDO and held the latter's hand, causing the pisao to fall to the ground. He seized the pisao; and just as LEOPOLDO delivered a fist blow at him, he swang the pisao at LEOPOLDO, hitting the latter on the right chest. LEOPOLDO again rushed towards him and boxed him, prompting him to stab LEOPOLDO with the pisao on the lower right chest. When LEOPOLDO once more lunged at him, he stabbed the former on the abdomen. Despite the stab wounds, LEOPOLDO again lunged at DEMETRIO, who forthwith stabbed the former for the fourth time. This time, LEOPOLDO fell down. DEMETRIO then ran towards the house of Romeo Tan. DEMETRIO further testified that during the scuffle, LEOPOLDO was somewhat "tipsy and weak."[14]

Ricardo Taride corroborated the testimonies of the defense witnesses that LEOPOLDO was the unlawful aggressor.[15]

The prosecution presented Mauro Valdez as a rebuttal witness. Mauro described as a lie the claim of the defense witnesses that LEOPOLDO kept shouting at everyone to fight him. Mauro maintained that he clearly saw the three appellants box, kick and stab LEOPOLDO. DEMETRIO's claim that he grabbed the pisao from LEOPOLDO is a big lie, as it was DEMETRIO who carried a Batangas knife. The victim was never able to wrest the knife from DEMETRIO because FILOMENO and TERESITO were boxing and holding him down while DEMETRIO was stabbing him. After LEOPOLDO fell down, the three stepped all over him and kicked him forcefully on the face, stomach and head. The victim's teeth were even thrown out because of the forceful

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kicks.[16]

After trial, the trial court rendered a decision[17] on 24 July 1989 convicting the appellants of the crime of murder and sentencing them to an indeterminate sentence of ten years and one day of prision mayor, as minimum, to eighteen years, eight months and one day of reclusion temporal, as maximum, and to indemnify the victim's heirs, solidarily, in the amount of P30,000.

Unsatisfied with the unfavorable verdict, the appellants appealed therefrom to the Court of Appeals. Since, as stated earlier, the conviction was affirmed and the penalty was increased to reclusion perpetua, the Court of Appeals did not enter its judgment; instead it certified and elevated the case to us.

In their supplemental brief, the appellants contend that the Court of Appeals should have appreciated in favor of DEMETRIO the justifying circumstance of defense of relative, as he was defending his brother-in-law FILOMENO; and that the offered version of the prosecution witnesses implicating FILOMENO and TERESITO should not have been given any evidentiary weight and value in view of the admission of DEMETRIO that he was the one who stabbed LEOPOLDO.

The main issue in this case here is one of credibility. In a plethora of cases, we have accorded great weight to, and respect for, the conclusions reached by the trial court on the issue of credibility of witnesses, as it has had the opportunity to observe closely in the first instance the demeanor of the witnesses.[18] The trial judge is best situated to assess and evaluate the probity and trustworthiness of witnesses, for he is able to observe directly their behavior and manner of testifying, and is thus in a much better situation to determine whether they are telling the truth or prevaricating.[19] Among the exceptions to this rule are when the trial court has acted arbitrarily,[20] or has overlooked or misunderstood certain facts or circumstances of weight and substance which, if considered, would materially affect the result of the case.[21]

In the present case, we see no cogent reason to reverse the trial court's and the Court of Appeals' assessment of the evidence. The prosecution witnesses were clear, straightforward and unequivocal in their narration of the facts leading to the death of the victim. Moreover, no evidence was presented by the defense to show that they had any reason to prevaricate on the stand. Absent any evidence showing any reason or motive for the prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[22] Accordingly, we find that no error was committed by the trial court and the Court of Appeals in giving credence to their testimony.

We also find unbelievable DEMETRIO's claim of defense of relative to justify the stabbing to death of LEOPOLDO. As the Court of Appeals held:

> Equally known and well understood by now are the requirements in order for defense of relative to be appreciated. The accused must prove that there was unlawful aggression by the victim, that the means employed to prevent or repel the unlawful aggression was reasonable, and that in case the provocation was given by the person attacked, the one making the defense must have no part therein.
>
> Having invoked the defense of relative, the burden of evidence that their act was justified and that they incurred no criminal liability therefor was shifted to the appellants. But they failed to prove unlawful aggression on the part of the victim... .
>
> Furthermore, the presence of several stab wounds on the body of the victim, four of them fatal, negated appellants' claim that the killing was justified. Instead it indicates a determined effort to kill the victim. Even assuming for argument's sake that it was the victim who initiated the attack, however, when the appellants wrested the knife from him who then fell on the ground in a helpless and vulnerable position, the aggression which the latter had supposedly started already ceased. But at that point, the appellants still continued

delivering blows on the victim. They thus became the unlawful aggressors.[23]

As to the appellants' second proposition, we find that even if DEMETRIO has admitted to stabbing LEOPOLDO, his co-appellants FILOMENO and TERESITO are equally liable because a conspiracy existed among them.

In a conspiracy, it is not necessary to show that all the conspiratiors actually hit and killed the victim. What is important is that all the participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim.[24] Conspiracy may even be shown through circumstantial evidence, or deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, a concerted action, and a community of interest.[25]

Thus, when FILOMENO and TERESITO boxed and kicked LEOPOLDO while DEMETRIO was stabbing the latter, they were also liable for his death, as their actions showed a unity of purpose, which was to kill LEOPOLDO.

Obviously, the killing was attended by abuse of superior strength. LEOPOLDO was alone and unarmed when attacked by the three appellants, one of whom (DEMETRIO) was armed with a knife. Besides, as DEMETRIO himself testified, LEOPOLDO was "tipsy and weak" at the time. Moreover, LEOPOLDO was occupied with fending off the fistic blows and kicks of FILOMENO and TERESITO when DEMETRIO stabbed him. The number of wounds inflicted also shows that appellants used excessive force out of proportion to the means available to LEOPOLDO.[26]

Hence, the crime committed by the three accused-appellants was murder, which is punishable by reclusion temporal in its maximum period to death. There being no modifying circumstances proven in this case, the imposable penalty is the medium period of the prescribed penalty, which is reclusion perpetua.[27] The Court of Appeals was, therefore, correct in modifying the sentence imposed by the trial court.

We also sustain the Court of Appeals in increasing the indemnity from P30,000 to P50,000 in line with current case law.[28] Under Article 2206 of the Civil Code, in addition to the death indemnity, the accused shall be liable for the loss of the earning capacity of the deceased. In fixing the indemnity, the Court shall consider the victim's actual income at the time of his death and his probable life expectancy. The formula repeatedly adopted by the Court is as follows:

Net earning capacity

= 2/3 x (80 - age of the

a reasonable portion

victim at the time of

x

of the annual net

his death)

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income which would been received by the heirs for support.[29]

LEOPOLDO was 36 years old at the time of his death. His widow testified that he was earning P1,000 a month during his lifetime. His annual income was therefore P12,000. In the absence of proof of his living expenses, his net income is deemed to be 50% of his gross income.[30] Using the above formula, we fix the indemnity for loss of earning capacity of LEOPOLDO at P176,000; thus:

Net earning capacity

= 2 (80 - 36) x (50% of P12,000)

3

= 2 (44) x P6,000

3

= 29.33 x P6,000

= P176,000

WHEREFORE, the decision of the Court of Appeals convicting appellants FILOMENO BARNUEVO, DEMETRIO PALACAT and TERESITO SABALZA of the crime of Murder and sentencing them to suffer the penalty of reclusion perpetua and to pay P50,000 death indemnity to the victim's heirs is AFFIRMED. The appellants are further ordered to pay the victim's heirs P176,000 as indemnity for the deceased's loss of earning capacity.

Costs de oficio.

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SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 149-160. Per Sandoval-Gutierrez, A., J., (now Associate Justice of the Supreme Court) with De la Cruz, A., and Velasco, Jr., P. (now Court Administrator), JJ., concurring.

[2] Original Record (OR), 82.

[3] TSN, 28 May 1985, 3; TSN, 27 June 1990, 4.

[4] Id., 4-8, 13-14; Id., 4-6.

[5] TSN, 28 May 1985, 12-13; TSN, 27 June 1990, 5-6, 11-13.

[6] TSN, 13 November 1984, 12-17.

[7] Id., 16-18.

[8] Id., 3-10.

[9] Exhibit "C," OR, 3.

[10] TSN, 11 March 1986, 2-6.

[11] TSN, 20 May 1986, 2-6; TSN, 23 July 1986, 2-4.

[12] TSN, 1 April 1987, 3-7.

[13] TSN, 6 April 1988, 3-7.

[14] TSN, 3 January 1989, 4-13.

[15] TSN, 24 February 1987, 4-9.

[16] TSN, 16 May 1989, 2-9, 13.

[17] Rollo, 132-148. Per Judge Josephine K. Bayona.

[18] People v. Vidal, 308 SCRA 1, 10 [1999]; People v. Malunes, 247 SCRA 317, 324 [1995]; People v. Gomez, 251 SCRA 455, 465 [1995].

[19] People v. Peralta 283 SCRA 81, 93 [1997]; People v. Sualog, 15 November 2000.

[20] People v. Quejada, 223 SCRA 77, 86 [1993].

[21] People v. Arellano, 282 SCRA 500, 509 [1997]; People v. Teodoro, 280 SCRA 384, 392 [1997].

[22] People v. Rendoque, 322 SCRA 622, 634 [2000].

[23] Rollo, 155-156.

[24] People v. Alib, 322 SCRA 93, 101 [2000].

[25] People v. Orbita, 322 SCRA 321, 325-326 [2000].

[26] People v. De la Cruz, 242 SCRA 129, 143 [1995]; People v. Gaviola, 327 SCRA 580 [2000].

[27] Article 63, Revised Penal Code; People v. Muñoz, 170 SCRA 107, 125 [1989].

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[28] People v. Espanola, 271 SCRA 689 [1997]; People v. Verde, 302 SCRA 690 [1999].

[29] People v. Espanola, supra note 28, at 717 [1997]; People v. Aspiras, 330 SCRA 479, 495 [2000].

[30] People v. Aspiras, supra at 495-496.

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