PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAPITO CABOTE A.K.A. “PITO”, ACCUSED-APPELLANT.

G.R. No. 136143. November 15, 2001

Ponente: PUNO, J.

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PUNO, J.:

On the moonlit night of November 12, 1995, the accused Agapito Cabote's senses dimmed, and with a scythe, the green-eyed monster in him unleashed its fury and cut short the life of his rival Ramil Tero.

On June 4, 1996, an information was filed against the accused Cabote, viz:

> "That on or about November 12, 1995, in the Municipality of Maco, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill and armed with a Scythe (Sanggot), did then and there willfully, unlawfully and feloniously attack, assault and hack one Ramil Tero, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.
>
> CONTRARY TO LAW."[1]

The accused pleaded not guilty. Trial ensued.

The evidence of the prosecution consists mainly of the testimony of Florentino Avenido, the brother-in-law of the accused who is the husband of Avenido's sister, Lina Cabote. In 1995, Avenido was a detainee, having been accused of stealing a goat. On November 2, 1995, however, he escaped from prison and went home to his sitio in Davao. On that day, Avenido heard the accused warn the victim Ramil Tero to stop visiting Jessa Ramos, otherwise he would hack his neck. Tero was a close friend of Avenido and the boyfriend of Ramos. The accused was courting Ramos despite his being married to Avenido's sister. Avenido dissuaded the accused Cabote from carrying out his threat as Tero was a good fellow, but Avenido's dissuasion only irked the accused who gestured as if he also wanted to hack Avenido. The accused's abode was about 30 meters away from Analyn Maginsay's house where Ramos lived. Avenido, on the other hand, lived about twenty meters from the Maginsay residence and about 50 meters from the accused Cabote's house.

On November 12, 1995, at about 6:30 in the evening, Avenido went home to his parents' residence in Maco, Davao. The accused Cabote approached him and confided that he was going to kill Tero who was then visiting Ramos at Maginsay's house. The accused tucked a scythe at the back of his trousers and covered it with his shirt. Later that evening, at about 9:30, Tero came down from Maginsay's house. The accused met Tero near the store of Avenido's elder brother, about eight meters away from Maginsay's house. Avenido was about six meters away from the two. As it was a moonlit night, Avenido saw Cabote put his left arm around Tero's shoulder and the two walked towards Tero's house. Avenido followed them, hiding at the side of the road. When the two reached an uninhabited area, about 100 meters away from Maginsay's house, Cabote suddenly pulled out the scythe he hid under his shirt and hacked Tero with his right hand. Tero was hit on the neck, at the base of his head and fell down. Despite his close friendship with Tero, Avenido who was about five meters away from the two did not

come to Tero's aid as he was afraid that the accused might also hack him. Avenido ran home. The accused saw him. After a while, the accused appeared in Avenido's house and told the latter that Tero was already dead. The accused's clothes were bloodstained.

As Avenido was an escaped detainee, he was afraid to draw attention to himself and thus kept mum about Tero's killing. On May 3, 1996, however, he was rearrested. Two days later, he told Tero's parents about the accused's hacking of Tero. On May 9, 1996, he informed the police about the killing incident and executed an affidavit narrating it.[2]

Dr. Maria Rena Rimando, Municipal Health Officer of Maco, Davao also testified. On November 20, 1995, at about 11:00 in the morning, she examined the cadaver of Ramil Tero. Tero sustained ten wounds, six on the head and neck, two on the chest, one on the left hand and another on the right hand. The fatal wounds were those inflicted on the head and neck. The cause of death, as stated in the death certificate Dr. Rimando signed, was shock secondary to multiple hack wounds. She opined that a sharp-edged object like a bolo or a fan knife could have been used to inflict the wounds.[3]

The accused took the witness stand. He confirmed that he was the brother-in-law of the prosecution's principal witness, Florentino Avenido. Prior to November 12, 1995, he and Avenido were in good terms. In fact, they were close to each other and Avenido used to go to his house. He was thus surprised when Avenido executed an affidavit pointing to him as the culprit behind the killing of Tero. He was aggrieved when Avenido testified against him.

The accused denied Avenido's testimony that he (Cabote) killed Tero on November 12, 1995. He claims that during that time, he was at home in Lauya, Maco, Davao, taking care of his sick child. At 10:00 that evening, Avenido went to his house to hide as he had killed Ramil Tero. Seeing the bloodstains on Avenido's body and the bloodstained scythe Avenido held, the accused Cabote refused him entry for fear that he would be implicated in Tero's killing. Cabote knew Tero as they were neighbors. Avenido insisted on coming up the stairs leading to the entrance of the house, but Cabote kicked the entry door and Avenido fell to the ground. Avenido left and shouted at Cabote not to tell a soul about Tero's killing or else he would come back and kill him. Cabote did not see Avenido again after that night until the latter was apprehended again in San Vicente, Panabo.

The accused Cabote denied courting Jessa Ramos nor threatening Tero not to visit Ramos or else he would cut off his head. In fact, he had not seen the latter in their locality.

Elena Cabote, wife of the accused and older sister of Florentino Avenido, testified. On the night of November 12, 1995, Elena was at home sleeping with her husband and four children. At about 10:00 that evening, they were awakened by a knock on their door. When they looked out to see who was knocking, they saw Avenido with bloodstains on his clothes and holding a bloodstained scythe. Avenido revealed to them that he had killed Ramil Tero. They asked him why he killed Tero and he replied that it was because Tero was his rival in courting Jessa Ramos. He asked permission to come up the stairs and hide in their house. The accused, then carrying their sick child, refused him entry for fear that he would be implicated in the killing. Avenido insisted, but the accused Cabote kicked the door, causing Avenido to fall to the ground. Avenido warned them not to tell the authorities about the killing, otherwise he would come back to kill the accused's family. Avenido left, still in his bloodstained shirt and holding his bloodstained scythe, and headed for Panabo. Elena was scared. Subsequently, policemen arrived and apprehended the accused Cabote and a certain Eddie Mahinsay. Elena and the accused asked the police to show them a warrant for the arrest of the accused, but the police did not carry one. Elena did not tell the police that it was Avenido and not her husband who killed Tero as she was afraid Avenido would carry out his threat. The police brought the accused to the police station, while Elena remained at home. The following day, at

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about 5:00 in the afternoon, the accused Cabote was released from jail. But his liberty was short-lived as he was again arrested some six months later or in May 1996 for the killing of Tero.

Elena claimed that she was testifying to tell the truth despite being closer to her brother who is a blood relative than to her husband, and despite Florentino's threats of harm upon her and her family. In the course of the trial, she failed to testify on April 21, 1998 and her elder sister wrote to her (Elena's) lawyer that she could not testify as Avenido threatened that if she went to court, he would kill Elena's children. Elena signed the letter in block letters.[4]

Elena did not have any quarrel or conflict with Avenido, and in fact had a very good relationship with him prior to November 12, 1995. She was also not aware of bad blood between her husband and Avenido. Elena testified that prior to November 12, 1995, Avenido had already been in prison in Panabo for one year and escaped in June 1995. After escaping, Avenido would not show himself in public and admitted that Avenido would have had a hard time courting Jessa Ramos.[5]

The trial court gave credence to the prosecution's story and convicted the accused, viz:

> "WHEREFORE, consistent with all the foregoing findings, this Court finds the accused Agapito Cabote, alias "Pito", 32 years of age, married to Elena Avenido, laborer by occupation and resident of Alauya, Binuangan, Maco, Compostela Valley Province, guilty beyond reasonable doubt of the crime of Murder, as charged in the information and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act 7659, and is therefore hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessory penalties provided by law, and to indemnify the heirs of the victim, Ramil Tero, in the amount of Fifty Thousand (P50,000.00) Pesos for such death, plus Twenty Thousand (P20,000.00) Pesos as moral damages, and to pay the costs. In the service of this sentence, said accused is hereby committed to the custody of the Superintendent, Davao Prison and Penal Farms, Panabo, Davao del Norte, pursuant to Department of Justice Circular No. 4 dated January 15, 1991."

Hence, this appeal with the lone assignment of error, viz:

> "THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION EYE-WITNESS FLORENTINO AVENIDO DESPITE THE FACT THAT HIS TESTIMONY WAS NOT CORROBORATED BY OTHER WITNESS."[6]

As the crime alleged was committed on November 12, 1995, the law applicable to the case at bar is Article 248 of the Revised Penal Code, as amended by R.A. 7659, viz:

> "Art. 248. Murder.- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
>
> x x x x x x x x x
>
> 5. With evident premeditation."

In assailing the decision of the trial court, the accused-appellant attempts to undermine the credibility of the witness, Florentino Avenido. He makes much of the fact that the events of November 12, 1995 were told through the uncorroborated testimony of Avenido. In giving credence to the latter's testimony, we adhere to the well-settled rule in jurisprudence, viz:

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> ". . . the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner (People v. Tulop, 289 SCRA 316 [1998]). Witnesses are to be weighed, not numbered (People v. Villanueva, 284 SCRA 501 [1998]). Evidence is assessed in terms of quality and not quantity. Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of the lone witness. For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness (People v. Rayray, 241 SCRA 1 [1995]; People v. Jumao-as, 230 SCRA 70 [1994])."[7]

We find no reason to disturb the trial court's assessment of the credibility of the lone witness. Time and again, we have ruled that the findings of a trial court on the credibility of witnesses deserves great weight as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the witness' credibility as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Absent any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.[8]

Accused-appellant also calls the Court's attention to the six-month delay in Avenido's report of the killing to the authorities. Avenido, however, adequately explained the delay. As he was a fugitive from justice at the time he witnessed Cabote kill Tero, he understandably wanted to avoid drawing attention to himself. Thus, two days after he was re-arrested on May 3, 1996, he revealed to the parents of the victim what he knew about their son's death. On May 6, 1996, he reported the killing incident to the police. Well-entrenched is the rule that delay in reporting what a witness knows about a crime does not render his testimony false or incredible for the delay may be explained by the natural reticence of most people and their abhorrence to be involved in a criminal case.[9] In this case, aside from natural reticence, Avenido had more reason to be afraid of getting involved in a criminal case as he was hiding from the authorities.

To further puncture the credibility of the lone witness' testimony, the accused points out some parts of the latter's testimony which appear to be incredulous. First, he asserts that Avenido could not have possibly seen the bloodstains on the shirt of the accused when the latter went to Avenido's house after the killing. Avenido testified, however, that that fateful night of November 12, 1995 was a moonlit night. This Court has ruled that moonlight and starlight may be sufficient illumination to identify the perpetrator of the crime[10] and see his clothing. More so in the instant case where Avenido came face to face with the accused when the latter went to Avenido's house. Second, the accused points out that it was doubtful that his arm was still around Tero's shoulder even after the hacking, as Avenido testified. The Court finds nothing doubtful about this part of the testimony as the victim was hacked several times and the accused may precisely have been holding the victim on the shoulder to prevent him from getting away and to keep him steady after the first blow. Avenido testified that Tero later fell to the ground and the accused then no longer had his arm around the victim, viz:

> "Q:
>
> Even after the hacking, the left arm of Cabote was still on the shoulder of the victim. Is that what you want to tell us?
>
> A:
>
> Yes, sir.

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Q:

So, the victim did not fell (sic) down after the hacking?

A:

He fall (sic) down.

Q:

And even after the victim dropped on the ground after (sic) hacking, this Cabote continued placing his left arm on the shoulder of the victim?

A:

No more."[11]

We have carefully reviewed the evidence on record and find that the accused is guilty beyond reasonable doubt of the crime for which he is charged. Avenido clearly narrated how the accused Cabote hid a scythe behind him under his shirt and met Ramil Tero on the night of November 12, 1995, put his left arm around the latter's shoulder, walked some distance with him, and suddenly hacked him to death in an uninhabited area.

While the accused may have warned Tero ten days back or on November 2, 1995 that he would hack him if he (Tero) did not stop seeing Jessa Ramos, the accused was not hostile when he met Tero in the evening of November 12, 1995. The accused's scythe was hidden under his shirt, thus, Tero was not put on guard. The two just walked together towards Tero's house with the accused's arm around the latter's shoulder. There was no showing that the latter struggled to break free or that there was any hostility between the two as they trudged together. The accused just all of a sudden pulled out the sycthe he hid under his shirt and hacked Tero. This leads us to conclude that Tero's killing was treacherous. Treachery requires the concurrence of two conditions: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[12] "The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim."[13] That the attack on Tero was so sudden he did not have an opportunity to defend himself and that the accused deliberately adopted the use of a scythe to hack Tero are clear from the testimony of Avenido. Even if Tero may have been forewarned of a possible danger to his person ten days before his death, the attack was nevertheless treacherous as we have ruled that despite the forewarning of danger to one's person, treachery may still be appreciated if the attack was executed in such a manner as to make it impossible for the victim to defend himself or to retaliate.[14] In the instant case, the suddennes of the hacking and the weapon used, a scythe, did not give the unarmed Tero a chance to defend himself and retaliate, thus he simply fell to the ground after the accused hacked him.

We find, however, that evident premeditation cannot be appreciated. The following are the elements of evident premeditation: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[15] The essence of premeditation is that the execution of the

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criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[16] For this aggravating circumstance to be considered, it is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out. In the instant case, the evidence shows that the accused revealed to Avenido his intention to kill Tero at 6:30 p.m. of November 12, 1995. He hacked Tero to death some three hours later or at about 9:30 that same evening. To our mind, the prosecution has not proved beyond reasonable doubt that the accused's attack on Tero was preceded by such "cool thought and reflection upon the resolution to carry out his criminal intent" within the three-hour gap.

Anent the damages, the trial court was correct in ordering the accused to pay the heirs of the victim P50,000.00 as civil indemnity. In accord with prevailing jurisprudence, however, we increase the award of moral damages from P20,000.00 to P50,000.00, despite the absence of proof of mental and emotional suffering of the victims' heirs. We ruled in People v. Panado,[17] also a murder case, viz:

> "Current jurisprudence has set moral damages at P50,000.00. Nonetheless, we deem it proper to rethink our policy on moral damages.
>
> Unlike in the crime of rape, we grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of any allegation and proof of the heirs' emotional suffering. . . With or without proof, this fact can never be denied; since it is undisputed, it must be considered proved."[18]

IN VIEW WHEREOF, the impugned decision is AFFIRMED with the MODIFICATION that the accused Cabote is hereby adjudged to pay the heirs of the victim the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Costs against the accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, p. 7.

[2] TSN, Florentino Avenido, October 14, 1996, pp. 4-23.

[3] TSN, Dr. Maria Rena Rimando, December 10, 1996, pp. 3-7; Exhibit "A", Original Records, p. 8.

[4] Exhibit "1", Original Records, p. 110.

[5] TSN, Elena Cabote, May 26, 1998, pp. 4-18.

[6] Rollo, p. 39.

[7] People v. Hillado, 307 SCRA 535 (1999), pp. 549-550.

[8] People v. Pardua, et al., G.R. No. 110813, June 28, 2001, citing People v. Mosqueda, 313 SCRA 694 (1999).

[9] People v. Hilario, G.R. No. 128083, March 16, 2001, citing People v. Navarro, 297 SCRA 331 (1998).

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[10] People v. Clariño, et al., G.R. No. 134634, July 31, 2001, citing People v. Lopez, 312 SCRA 684 (1999), citing People v. Pueblas, 127 SCRA 746 (1984), People v. Oliano, 287 SCRA 158 (1988), and People v. Vacal, 27 SCRA 24 (1969).

[11] TSN, Florentino Avenido, October 14, 1996, p. 12.

[12] People v. Fajardo, G.R. No. 132318, July 6, 2001, citing People v. Barona, 323 SCRA 239 (2000); People v. Serzo, 274 SCRA 553 (1997).

[13] Id., citing People v. Magno, 322 SCRA 494 (2000).

[14] Id., citing People v. Ronato, et al., 316 SCRA 433 (1999); People v. Javier, 269 SCRA 181 (1997).

[15] People v. Tan, et al., G.R. Nos. 116200-02, June 21, 2001, citing People v. Jose, G.R. No. 130666, January 31, 2000 cited in People v. Herida, G.R. No. 127158, March 5, 2001.

[16] Id., citing People v. Ariola, 100 SCRA 523 (1980).

[17] People v. Panado, et al., G.R. No. 133439, December 26, 2000.

[18] Id., p. 14.

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