

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO ICALLA Y INES, ACCUSED-APPELLANT.

G.R. No. 136173. March 07, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In Criminal Case No. 97-0128, the Regional Trial Court of Pasay City, Branch 109, found appellant Ernesto Icalla y Ines guilty beyond reasonable doubt of the crime of murder and imposed on him the penalty of death. Its decision is now before us on automatic review.

The Information against appellant reads:

That on or about the 20th day of May 1997 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Ernesto Icalla y Ines with intent to kill, with evident premeditation and treachery did then and there willfully, unlawfully and feloniously stab with a bladed weapon one Jessie Dalupo y Manalo thereby inflicting upon the latter mortal wounds which caused his death.

Contrary to Law.[1]

After appellant entered a plea of not guilty on June 9, 1997.[2] Trial on the merits ensued.

The facts of this case are as follows:

Appellant Ernesto Icalla is married to Adelina Icalla with whom he has three children. From 1969 to 1992, appellant worked as a furniture maker in Bantay, Ilocos Sur, until he went to Manila and was employed by Modas Retro Antique Shop at F.B. Harrison St., Pasay City. He left his wife and children behind in the province.[3]

Shortly after he arrived in Manila, appellant began co-habiting with Belen Dawal and begot a child with the latter. The two separated in 1995 when Adelina joined appellant in the city and Belen discovered that her live-in partner was actually a married man. However, appellant continued to visit Belen at her house despite the separation, which caused quarrels between appellant and his legal wife.

Occasionally, Belen would sell t-shirts and men's underwear to augment her income. Among those who bought her goods were construction workers in a construction site situated 100 meters away from the place where appellant worked. It was under these circumstances that Belen met the victim, Jessie Dalupo, who was one of her customers. In February of 1997, Belen and Jessie developed a romantic relationship which did not sit well with appellant. This led to frequent quarrels between appellant and Belen.

Belen testified that in the early evening of May 19, 1997, she and appellant had a quarrel on account of Jessie. After appellant left her house, Belen followed appellant to the construction site where he saw Jessie conversing with Belen's sister and cousin. Appellant thus had an argument with Jessie. Evidently, appellant angrily whipped out a "balisong." When appellant could not be pacified, Belen called appellant's legitimate wife, Adelina, who came and brought appellant home.[4]

At about 8:00 P.M. that same evening, appellant returned to the building site. Prosecution witness Arcadio Fermin approached him and blocked his way. Appellant invited Arcadio and another prosecution witness, Wilson Mesiano, for a drink so that they could "understand each other." While drinking at the ground floor of the jobsite, appellant inquired into the whereabouts of Jessie and expressed his wish to confront the latter regarding his relationship with Belen. Appellant asked Wilson and Arcadio to invite Jessie to drink with them, but the two witnesses allegedly told appellant that Jessie was already asleep in one of the unfinished rooms. According to Wilson and Arcadio, appellant also told them that he wanted to vindicate his honor ("aalisin ko ang dumì sa aking ulo") because he was being betrayed by Belen ("pinependeho"), and that he wanted to meet with the construction foreman to have Jessie removed from employment.

After they finished drinking one bottle of Ginebra gin, Wilson and Arcadio begged to be excused as they had work the following day. To make sure that appellant would not cause any trouble, they escorted appellant home, before the duo returned to the construction site to catch some sleep.[5]

Instead of staying home, appellant went back to Belen's house at 2:00 A.M. of May 20, 1997. He again quarreled with her and left after half an hour. Belen locked the door of the house to prevent appellant from entering in case he returned.[6]

At around 3:00 A.M., Wilson, Arcadio and another co-worker, Jeramil Eala, were awakened by shouts coming from the room where Jessie was sleeping. They immediately ran towards the place where the shouts came from. They saw appellant, knife in hand, going down the stairs of the building. Wilson and Arcadio claimed that they distinctly saw appellant remove the plywood cover used as makeshift door and dash away from the scene of the crime. All three co-workers maintained that they recognized appellant since the place was well-lit and they were merely 15 feet away when appellant ran away.

Upon returning to Jessie's room, Jeramil, Arcadio and Wilson saw Jessie's bloodied body sprawled on the floor. Wasting no time, Jeramil and another co-worker loaded Jessie into a tricycle and brought him to the Manila Sanitarium Hospital where he was pronounced "dead on arrival." [7] Arcadio and Wilson chose to stay behind in the jobsite.[8]

At 4:30 A.M., SPO1 Antonio Canoy was summoned to conduct an investigation on Jessie's death. When he arrived at the hospital, he was informed that the suspect was still in the vicinity. Belen and some of the victim's co-workers identified appellant as the person who killed Jessie and accompanied the police back to where the killing took place. With the assistance of barangay councilors and community youth volunteers, the police apprehended appellant at 5:00 A.M. as he was entering the compound of the Antique Shop, his workplace.

In the course of investigation, SPO1 Canoy was informed that appellant had changed his clothes. The police then sought to retrieve the blue shirt and dark pants allegedly worn by appellant when he attacked the deceased. These were recovered without difficulty at 10:00 A.M. when they were surrendered voluntarily by appellant's wife.[9] The soiled garments were subjected to forensic chemical and hematology examination[10] and were found positive for the presence of human blood type "B," the victim's blood type.[11] The weapon used in the killing was never found.

An autopsy[12] of the victim's cadaver conducted by NBI Medico-Legal Officer Bienvenido Muñoz, M.D., revealed the extent of the injuries suffered by the victim. Dr. Muñoz testified in court that Jessie sustained five stab wounds, two of which penetrated the heart, liver and gall bladder and produced massive hemorrhage which led to the victim's death. Except for one wound located on the left thigh, all wounds were inflicted from above going downward. According to the medical officer, a sharp, pointed, single-edged instrument like a "balisong" or kitchen knife[13] was used by the killer.

Appellant denied killing Jessie Dalupo, and offered an alibi as his defense. Corroborated by his wife, Adelina,[14] appellant stated that on May 19, 1997, he reported for work from 8:00 A.M. to 5:00 P.M. and rendered overtime work up to 10:00 P.M. This was affirmed by the timekeeper of Modas Retro Antique Shop, Roger Quiñones[15] who presented a time record book in court. Appellant claimed that contrary to the evidence presented by the prosecution, he wore a green shirt and a pair of red short pants that day. According to appellant, after leaving the factory, he went straight home, slept with his wife and did not wake up until 5:00 A.M. the following day. Next morning, he asked for money from his wife to buy some cigarettes. However, on his way out, SPO1 Canoy and another police officer, Reynaldo Paculan, suddenly pounced on him and pointed a gun at him. Both were wearing civilian clothes and were not armed with a warrant. They handcuffed him, entered his house, and took a blue shirt and a pair of brown pants from his "aparador." He and his wife were then told to prepare P20,000.00 in exchange for the clothes.

Thereafter, appellant was brought in front of the Manila Sanitarium Hospital. Paculan allegedly entered the hospital and took with him the blue shirt and brown pants which were confiscated earlier. When Paculan returned, appellant was surprised to see his clothes stained with blood. Referring to the pieces of clothing, Paculan told appellant "ito ang papatay sa iyo." He was subsequently brought to the police precinct where he was detained.

At the trial, appellant insisted that he did not know the deceased or any of the prosecution witnesses except for Belen. He claimed that there was no truth to the allegation that he became jealous of the deceased. He added that the time of the alleged killing, appellant was no longer involved with Belen, his former paramour.[16]

Convinced that the evidence of the prosecution satisfactorily met the quantum of proof required for conviction, found appellant guilty beyond reasonable doubt and sentenced him to death. It decreed as follows:

IN VIEW OF ALL THE FOREGOING, the Court finds accused Ernesto Icalla y Ines guilty beyond reasonable doubt for the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code as amended by RA 7659 and is hereby sentenced to DEATH. He is also ordered to pay P60,000.00 civil liability to the heirs of the victim.[17]

Appellant now urges the Court to acquit him on the ground that the trial court erred in:

I

...RELYING MAINLY ON CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE PROSECUTION AS BASIS FOR THE CONVICTION OF THE ACCUSED.

II

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

The main issue for resolution is whether the prosecution's evidence is sufficient for the conviction of appellant for murder and the imposition on him of the death sentence.

At the outset, we note that appellant faults the trial court for its reliance on circumstantial evidence. However, it is well-settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[18] Conviction may still be proper if factual circumstances duly proven by the prosecution constitute an unbroken chain which lead to a fair and reasonable conclusion that the accused is guilty to the exclusion of all others. To support a conviction based on circumstantial evidence, the concurrence of the following requisites is essential: (a) there must be more than one circumstance; (b) the facts from which the inference of guilt is based must be proved; and (c) the combination of all the circumstances is such as to produce

conviction beyond reasonable doubt.[19] Even if there is no eyewitness to the crime, responsibility therefor can be established by the totality of the duly proven facts that yield an inevitable conclusion consistent with the guilt of the accused.

Based on testimonies under oath given in court by prosecution witnesses Arcadio Fermin, Wilson Mesiano, Jeramil Eala and Belen Dawal, the trial court concluded that the following circumstantial evidence proved appellant's complicity in the killing of Jessie Dalupo even if they did not actually witness the assault:

- That victim Jessie Dalupo had an amorous relation with Belen Dawal, a former live-in partner of accused Ernesto Icalla with whom she has a child;
- That this made the accused extremely jealous and on several occasions before the incident was known to be looking for Jessie Dalupo and was roaming around the construction site wherein the victim was a stay in construction worker;
- That on the early evening of May 19, 1997, he invited the two co-workers of the victim, Wilson Mesiano and Arcadio Fermin, for a drink and on said occasion likewise looked for Jessie Dalupo whom he said he wanted to confront because he wanted to vindicate himself by removing the feces in his head (aalisin niya ang dumi sa kanyang ulo);
- That accused has repeatedly requested an audience with the construction foreman for the purpose of having Jessie Dalupo fired;
- That again at about 10:00 p.m. of May, 19, 1997 after his quarrel with his former live-in partner, he again rushed to the construction site to make trouble but was pacified by Belen Dawal and his wife who brought him home;
- That finally in the morning of May 20, 1997, a shout for help was heard from Jessie Dalupo and accused was seen coming out of the room where the victim slept and was seen rushing down the stairs and run away;
- That immediately thereafter, the victim was found bloodied and sprawled on the floor by Arcadio Fermin and Wilson Mesiano;
- Rushed to the hospital, victim was dead on arrival due to multiple stab wounds one of which is on the back of the victim; another on his left chest perforating the heart while another perforated the liver and the gall bladder...;
- That the recovered clothings of the accused consisting of a t-shirt and pants were submitted to the Forensic Chemistry Division of the NBI and found to be positive for the presence of human blood type "B." [20]

In his bid to gain an acquittal, appellant contends that the above-quoted circumstances were not duly proven by the prosecution. He claims the "love triangle" theory by the prosecution was improbable. Also, appellant claims that the prosecution witnesses were biased in favor of the deceased. He vehemently denies having killed Jessie Dalupo. He assails the credibility of witnesses for the prosecution. He concludes that the prosecution's evidence is not sufficient to convict him beyond reasonable doubt for the crime of murder.

Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court. Having observed the witnesses firsthand, it could assess their demeanor, conduct and attitude. The trial court findings with regard to the credibility of witnesses are binding upon this Court except when there are facts and circumstances of weight and influence overlooked by the lower court, which could alter the result.[21] In this case, we find here no reason to disregard the general rule so as to apply the exception.

First, we note that appellant insists that he could not have been jealous of the deceased. His separation from

Belen, according to him, was consensual or mutually agreed upon. He avers that he did not have a motive for killing the deceased since the latter and Belen became lovers only after appellant's relationship with her had ended.

On this point, however, the Office of the Solicitor General observes that although Belen and appellant mutually agreed to separate, it did not necessarily imply that appellant no longer had any affection for her. The OSG avers it is not unlikely that appellant's dormant feelings for Belen were awakened by the threat of the victim's appearance in Belen's life two years after they parted ways. Appellant's obsessive jealousy manifested itself in various instances described by the prosecution witnesses. Their testimony established that as early as May 14, 1997 or five days prior to the killing, appellant unsuccessfully attempted to force his way into the construction site on the suspicion that Belen was having sexual relations with the deceased in one of the unfinished rooms. Every night thereafter, appellant was also seen roaming around the construction area and had in fact brandished a "balisong" when he argued with the deceased in the evening of May 19, 1997.[22] These testimonies constitute positive evidence which certainly deserve more weight than appellant's negative and self-serving assertion that he was not jealous of Belen's new boyfriend. At the very least, these incidents clearly indicated that appellant did not approve of Belen's love affair with the victim. Appellant's unsubstantiated denials can not be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[23]

Appellant maintains that the prosecution witnesses were biased against him due to the fact that they were co-workers and close friends of the victim. He further insinuates that their narration of the events which transpired before and after the killing was fabricated precisely to ensure his conviction. As proof of this perceived bias and fabrication, appellant cites the failure of Arcadio and Wilson to state in their joint sworn statement that he had remarked: "aalisin ko ang dumi sa aking ulo." He reasons that since this circumstance pertained to a very important detail of the incident, prosecution witnesses Wilson and Arcadio could not have reasonably forgotten to mention the same if indeed it had occurred.

Mere relationship of a dramatis personae to a witness does not automatically impair the latter's credibility nor mean that his testimony would be rendered less worthy absent any improper motive which can be ascribed to him.[24] In the present case, the witnesses were not even relatives of the deceased, but mere co-workers who were brought together by the circumstances of their employment. They were not shown to have been motivated by ill or other improper motives when they testified against appellant. Neither did appellant present an iota of proof to show that as witnesses they falsely testified against him.

The omission of Wilson and Arcadio to state in their sworn statement the fact that appellant made the remark: "aalisin ko ang dumi sa aking ulo," is far from fatal to the prosecution's cause. Arcadio explained that in preparing the statement, the investigating officers only inquired into the stabbing incident which occurred at 3:00 A.M. of May 20, 1997, but did not ask about events which had taken place earlier in the evening of May 19, 1997.[25] Besides, it is to be expected that sworn statements, usually taken ex-parte, are incomplete and often inaccurate since these are prepared by persons other than the affiants themselves. Omission of certain details therein do not detract at all from the credibility of a witness because his court testimony with respect to the same is subjected to the rigors of cross-examination by defense counsel.[26]

Furthermore, Arcadio positively identified appellant as the person he saw coming out of the room where the victim was killed. He never wavered in his positive identification of appellant in this connection despite extensive cross-examination. He categorically stated that he witnessed appellant running down the stairs with a knife in his hand, while Arcadio had an open and unobstructed view of the stairway which was well-lit,[27] a matter confirmed by an ocular inspection of the premises.[28] Accordingly, where conditions of visibility are favorable, and the witness does not appear to be biased, his assertion as to the identity of the malefactor should be accepted

as trustworthy.[29]

After careful consideration of the evidence on record, we are convinced that the trial court did not err in concluding that the chain of circumstantial evidence sufficiently proved appellant's criminal responsibility for the death of Jessie Dalupo. Worthy of note, the trial court cited no less than nine circumstances which were satisfactorily established by the positive, straightforward and credible testimonies of impartial witnesses. These circumstances lead the trial court to no other hypothesis than that appellant was the killer of Jessie Dalupo.

However, the offense committed is not murder. Appellant cannot be held liable for the crime of murder as charged in the information, but only for homicide, which was the offense proved. As observed by the OSG, there is no evidence as to the manner in which the assault was made or how the stabbing began and developed. Although the deceased sustained five wounds, some of which were at the back, this fact by itself does not constitute treachery which would qualify the killing to murder. There being no eyewitness to the killing or evidence on the mode of attack adopted by appellant, treachery could not be appreciated in this case as a qualifying circumstance.[30]

Likewise, there is a dearth of evidence to establish evident pre-meditation as either a qualifying or generic aggravating circumstance. While the witnesses may have testified regarding incidents prior to the killing, there is no evidence that appellant had ever conceived or expressed a resolve to kill the victim. For evident pre-meditation to be appreciated, the following must be shown: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and (c) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act. None of these were proven by the prosecution.[31]

Given the absence of these qualifying and aggravating circumstances, appellant can only be held liable for the crime of homicide.

WHEREFORE, the decision of the Regional Trial Court of Pasay City in Criminal Case No. 97-0128 is hereby MODIFIED. Appellant Ernesto Icalla y Ines is found GUILTY beyond reasonable doubt of HOMICIDE as defined under Art. 249 of the Revised Penal Code. Conformably, he is SENTENCED to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. He is also ORDERED to pay the heirs of the victim Jessie Dalupo y Manalo the sum of P50,000.00 as civil indemnity, and the costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Original Records, p. 1.

[2] Id. at 28.

[3] TSN, Sept. 11, 1997, pp. 2-3.

[4] TSN, Sept. 29, 1997, pp. 3-8.

[5] TSN, June 17, 1997, pp. 2-6 & June 24, 1997, pp. 5-9.

[6] Supra, note 6 at 8-10.

[7] TSN, Aug. 12, 1997, pp. 6-12.

- [8] Supra, note 7 at 7-8 & 9-11, respectively.
- [9] TSN, July 8, 1997, pp. 4-10.
- [10] Records, pp. 261-262.
- [11] TSN, July 22, 1997, pp. 20-21.
- [12] Supra, note 12 at 258.
- [13] Supra, note 13 at 4-7.
- [14] Supra, note 5 at 4-5.
- [15] TSN, Sept. 15, 1997, pp. 4-6.
- [16] TSN, Sept. 12, 1997, pp. 3-17.
- [17] Original Records, p. 379.
- [18] People vs. Mendoza, 301 SCRA 66, 78 (1999) citing People vs. Damao, 253 SCRA 146 (1996).
- [19] People vs. Ortiz, 316 SCRA 407, 412 (1999) citing Sec. 4, Rule 133, Revised Rules on Evidence; People vs. Rivera, 295 SCRA 99 (1998).
- [20] Rollo, pp. 34-35.
- [21] People vs. Dee and Salanga, G. R. Nos. 115251-52, October 5, 2000, p. 8, citing: People vs. Milliam, G. R. No. 129071, January 31, 2000, p. 13 and People vs. Paglinawan, G.R. No. 123094, January. 31, 2000, p. 14.
- [22] TSN, June 17, 1997, pp. 31-33
- [23] People vs. Monsayac, 307 SCRA 560, 568 (1999), citing People vs. Amaguin, 229 SCRA 166 (1994).
- [24] People vs. Carizo, 278 SCRA 263, 270 (1997), citing: People vs. Alban, 245 SCRA 549 (1995).
- [25] Supra, note 23 at 28.
- [26] People vs. Fulinara, 247 SCRA 28, 42 (1995), citing People vs. Padilla, 213 SCRA 631 (1992).
- [27] Supra, note 23 at 7 & 35.
- [28] TSN, June 24, 1997, pp. 2-3.
- [29] People vs. Montero, 277 SCRA 194, 206 (1997), citing People vs. Bongadillo, 234 SCRA 233 (1994).
- [30] People vs. Sañez, 320 SCRA 805, 815 (1999).
- [31] People vs. Guillermo, 302 SCRA 257, 273 (1999).

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