

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHARD BACUNAWA AND ERNESTO BACUNAWA, ACCUSED-APPELLANTS.

G.R. No. 136859. April 16, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellants, brothers Richard and Ernesto Bacunawa, were charged with murder in an Information[1] which reads:

That on or about January 19, 1994 in the evening thereof, at Barangay Canomay, Municipality of Dimasalang, Province of Masbate, Philippines within the jurisdiction of this Honorable Court, the above-named accused conspiring together and confederating with each other, with intent to kill by means of treachery and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab EMERSON LARGO, with a bladed weapon, inflicting upon him mortal wound which caused his death thereafter.

CONTRARY TO LAW.

Accused-appellants pleaded not guilty. Trial on the merits ensued.

At around 9:30 in the evening of January 19, 1994, prosecution eyewitness Gil Ortega and the victim Emerson Largo were on their way home when they passed accused-appellants Richard and Ernesto Bacunawa. Suddenly, Ernesto Bacunawa put his arms around Largo and Richard Bacunawa stabbed him with a one foot-long knife. Gil Ortega was three (3) arms length away from the victim when the stabbing took place. Thereafter, accused-appellants fled. Ortega was able to see accused-appellants' faces from the beam of the headlight of a motorcycle and the Coleman lamp at the house of one Melchor Arcueno, which illuminated a portion of the road approximately five arms length from where the victim was stabbed.

Prosecution witness Jeffrey Cervantes corroborated Gil Ortega's testimony. According to him, he and his wife were on their way to the town plaza of Canomay, Dimasalang, to watch the program in celebration of the town fiesta. Along the way, they passed by the house of Melchor Arcueno and saw accused-appellants standing at the side of the said house. Richard Bacunawa was carrying a knife and wearing a sleeveless shirt. Shortly thereafter, they met Gil Ortega and the victim Emerson Largo, who were on their way home to change clothes as they were planning to attend the dance being held at the plaza. After walking a few meters, Cervantes heard Emerson Largo shout for help, saying that he was hit. Cervantes went back to help and saw the victim with a stab wound at the right side of his abdomen. He also saw the culprits running away as they were illuminated by the light of the motorcycle.

While the victim was at the hospital of Dr. Alino, he gave a dying declaration pointing to Richard Bacunawa as the one who stabbed him. He thumbmarked his dying declaration with his own blood. The declaration was witnessed by SPO2 Pedrito Afafe and Christopher Capacio. Eventually, Emerson died.

Accused-appellants, however, had another version of the incident. According to Ernesto Bacunawa, he was looking for his brother Richard at the slaughterhouse where the latter worked. Not finding his brother there, he proceeded to Canomay, Dimasalang. As he passed by the road going to the church and the Zenaida Theater, which is about 150 meters from the scene of the crime, he heard and recognized the voice of his brother shouting for help. He rushed to where his brother was and found him being ganged upon by five men. He claimed that his younger brother was being punched and kicked even as he was already flat on his back. As Ernesto came to Richard's aid, the victim attacked and tried to stab him. He allegedly retaliated by stabbing him on the frontal part of his body. He claimed that he did not know the identities of the persons who attacked his younger brother. After stabbing the victim, he helped his brother while the victim's companions fled. The following morning, the brothers went to the farm of their uncle to help make copra. It was only there that they learned of the identity of the victim.

The trial court found the testimonies of prosecution witnesses Jeffrey Cervantes and Gil Ortega credible and, thus, rendered judgment as follows:[2]

WHEREFORE, the court finds and so holds that the accused Richard Bakunawa (sic) and Ernesto Bakunawa (sic) are guilty beyond reasonable doubt of the crime of Murder, and hereby sentences each of them to suffer imprisonment of reclusion perpetua with all the accessory penalties of the law, and to indemnify the heirs of Emerson Largo, the sum of P50,000.00 and the further sum of P50,000.00 as moral damages without subsidiary imprisonment in case of insolvency.

Accused-appellants interposed this appeal, claiming that the trial court erred:

I. IN HOLDING THAT RICHARD BACUNAWA STABBED THE VICTIM FOR THE TRUTH WAS THAT ERNESTO BACUNAWA REALLY STABBED THE VICTIM AND NOT RICHARD.

II. IN BELIEVING THAT ERNESTO BACUNAWA EMBRACED THE VICTIM FOR THE TRUTH WAS THAT THERE WAS NO EMBRACING OF THE VICTIM BEFORE THE STABBING.

III. IN BELIEVING THE THEORY OF THE PROSECUTION FOR THERE WAS NO QUARREL, GRUDGE, OR COMPELLING MOTIVE TO KILL.

IV. IN BELIEVING THE TESTIMONY OF JEFFREY CERVANTES THAT RICHARD BACUNAWA WAS CARRYING AND EXHIBITING PUBLICLY A FOOT-LONG KNIFE BEFORE THE STABBING.

V. IN BELIEVING THE TESTIMONY OF EYEWITNESS, GIL ORTEGA, THAT THE ACCUSED WERE LIGHTED (SIC) BY THE MOTORCYCLE AND SAID WITNESS RECOGNIZED THEM.

VI. IN BELIEVING THE TESTIMONY OF GIL ORTEGA THAT HE KNEW RICHARD BACUNAWA AND ERNESTO BACUNAWA ONE YEAR BEFORE JAN. 19, 1994.

VII. IN BELIEVING THE TESTIMONY OF EYEWITNESS, GIL ORTEGA, THAT RICHARD BACUNAWA AND ERNESTO BACUNAWA, EMERSON LARGO, GIL ORTEGA, THREE OTHER PERSONS WHOM YOU (SIC) CANNOT (SIC) RECOGNIZE, INCLUDING JEFFREY CERVANTES AND HIS WIFE WERE PRESENT DURING THE INCIDENT.[3]

We are not persuaded.

First, the defense insists that Ernesto Bacunawa, not Richard Bacunawa, was the one who stabbed Largo to death. This was based on Ernesto's supposed admission that he was the one who delivered the death blow on Largo. Also, the defense claims that the victim and the eyewitnesses imputed the crime to Richard because he was the one known to them.

This argument is flawed. Prosecution eyewitness Gil Ortega and the victim himself positively identified Richard Bacunawa as the person who delivered the fatal thrust. The defense failed to substantiate its claim that the victim and the eyewitness shifted the blame on Richard Bacunawa simply because they did not personally know Ernesto Bacunawa. Richard Bacunawa lived in the same town as Ortega and Largo since birth; hence, it is possible that the latter knew him better and not Ernesto. On the other hand, Ortega and Largo also knew Ernesto Bacunawa since he has been staying in Dimasalang, Masbate, at least one month prior to the incident.

Most damaging for accused-appellants was the dying declaration of Largo. At the time he executed his statement before the police, wherein he categorically identified Richard Bacunawa as his assailant, he was already in the throes of death. It would have been highly unusual for a dying victim not to identify and pin down his real assailant.

As a general rule, when a person is at the point of death, every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth, and therefore, his statements, under such circumstances, deserve great weight.[4]

Moreover, at the time of the commission of the crime, the scene was illuminated by a lamp emanating from a nearby house. Also, the headlight of a motorbike provided additional lighting. Time and again, this Court has ruled that "where conditions of visibility are favorable and the witnesses did not appear to be biased against the accused, their assertions as to the identity of the malefactors should normally be accepted. In the absence of any evidence to show that the witness was actuated by any improper motive, his identification of the accused as the assailant should be given full faith and credit." [5] Second, the defense claims there was no conspiracy between Richard Bacunawa and Ernesto Bacunawa. They attempted to discredit the eyewitness account of Gil Ortega stating that Ernesto Bacunawa put his arms around the victim prior to the stabbing by Richard Bacunawa, claiming that no statement to this effect was made in the victim's dying declaration. [6] The defense's claim is untenable. A victim in the throes of death will not bother to narrate a detailed account of the incident. What is foremost in his mind is survival - and the fact that he had already named his assailant would have sufficed for the time being. Besides, an examination of Largo's dying declaration shows that it was in the question-and-answer format. The investigating officer merely asked him four (4) questions, to wit: (a) whether he knew the identity of his assailant; (b) the name of his assailant; (c) whether he knew of any motive on the part of his assailant; and (d) how did he feel at that time. Clearly, he was not required to discuss in detail the step-by-step assault on his person.

Contrary to accused-appellants' claim, conspiracy is present in this case, as shown by the following circumstances: Upon seeing the victim, and without uttering any word, Ernesto Bacunawa tried to restrain Largo while Richard Bacunawa stabbed the victim. This clearly shows that there was unity in purpose and common criminal design between them. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. There is conspiracy if at the time of the commission of the felony, the defendants had the same criminal purpose and acted in unison towards the execution of their common criminal design. Once the conspiracy is proven, the act of one becomes the act of all regardless of who actually rendered the fatal blow on the victim. [7] Third, the defense maintains that the Bacunawa brothers could not have harmed Largo considering the absence of any motive for them to do so. However, this theory conflicts with Ernesto Bacunawa's admission that he was the one who killed the victim. Besides, proof of motive is unnecessary in view of the positive identification of the accused-appellants. [8] Last, the trial court properly appreciated the qualifying circumstance of treachery. The victim and his companion, Gil Ortega, were unsuspecting and totally unaware of the harm that was forthcoming. Immediately upon passing by accused-appellants, Ernesto Bacunawa suddenly restrained Largo by embracing him while Richard Bacunawa stabbed him on the stomach. The manner of the attack was so sudden leaving the victim no opportunity and time to offer even a token resistance. [9] The means of execution were spontaneously and consciously adopted. It can only be labeled as treacherous.

The trial court was, therefore, correct in finding accused-appellants guilty of the crime of Murder, for which the imposable penalty is reclusion perpetua to death.[10] There being neither aggravating nor mitigating circumstance, the lesser of the two indivisible penalties shall be imposed.[11]The trial court likewise did not err in awarding the sums of P50,000.00 as death indemnity and P50,000.00 as moral damages to the heirs of Emerson Largo, the same being consistent with prevailing jurisprudence.

WHEREFORE, based on the foregoing, the decision of the trial court, finding accused-appellants Richard Bacunawa and Ernesto Bacunawa guilty beyond reasonable doubt of the crime of Murder, and sentencing them to suffer the penalty of reclusion perpetua and to pay the heirs of Emerson Largo the sums of P50,000.00 as death indemnity and P50,000.00 as moral damages, is **AFFIRMED** in toto. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Records, p. 1.

[2] Penned by Judge Narciso G. Bravo of the Regional Trial Court of Masbate, Masbate, Branch 45.

[3] Rollo, pp. 52-53.

[4] VII Francisco, The Revised Rules of Court in the Philippines, Part I, 552 [1997 ed.].

[5] People v. Geral, G.R. No. 122283, June 15, 2000.

[6] Exhibit "D", Records, p. 69.

[7] Salvatierra, et al. v. Court of Appeals and the People of the Philippines, G.R. No. 115998, June 16, 2000.

[8] People v. Bermas, 309 SCRA 741 [1999].

[9] People v. Patalinghug, 318 SCRA 116 [1999].

[10] REVISED PENAL CODE, Art. 248.

[11] REVISED PENAL CODE, Art. 63 (2).

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