

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SUEENE DISCALSOTA Y JUGAR, APPELLANT.

G.R. No. 136892. April 11, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Without any proven qualifying circumstance, a killing constitutes homicide which is punishable by reclusion temporal, not death. Where the attack was made openly and the victim had ample opportunity to escape, treachery cannot be appreciated.

The Case

For automatic review by this Court is the Decision[1] dated September 28, 1998, issued by the Regional Trial Court (RTC) of Bacolod City (Branch 53), finding Sueene Discalsota y Jugar guilty of murder beyond reasonable doubt. The decretal portion of the Decision reads as follows:

“WHEREFORE, the court finds the accused Sueene Discalsota, alias Ronnie de la Peña, GUILTY of the crime of Murder, punished under Article 248 of the Revised Penal Code as amended by R.A. 7659, of Herbert Suarnaba. Applying Art. 63, of the Revised Penal Code, paragraph 2, No. 1, on the application of indivisible penalties, which provides that whenever ‘there is present only one aggravating penalty, the greater penalty shall applied,’ and there is no mitigating circumstance. The Court hereby imposes upon the accused Sueene Discalsota the penalty of DEATH.

“The accused is further ordered to pay the heirs of the deceased the sum of P50,000.00, as civil indemnity; P30,000.00 as moral damages, and P25,000.00 as actual expenses for the wake and funeral, and costs.”[2]

The Information[3] against appellant reads as follows:

”That on or about the 24[th] day of January, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without any justifiable cause or motive, being then armed with a bladed weapon, with intent to kill and by means of treachery and evident premeditation, did, then and there wilfully, unlawfully, and feloniously assault, attack and stab with said weapon one HERBERT SUARNABA Y CATALAN, thereby inflicting upon the person of the latter the following wounds:

‘I.W. 4 cm, left posterior lumbar area, level of L2 L4 penetrating Retroperiton[e]al Cavity completely transacting left kidney, inferior pole, penetrating abdominal cavity completely transacting pancreas, body, perforating posterior surface of Stomach, pundus with massive gastric spillage.

‘Cause of Death: Hypovolemic Shock 2°

which were the direct and immediate cause of his death.”

When arraigned on July 9, 1997, appellant, with the assistance of counsel,[4] pleaded “not guilty.”[5] In due course, the former was tried by the RTC which found him guilty of murder.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) summarized the evidence for the prosecution in this wise:[6]

“At about 1:00 P.M. of January 24, 1996, the victim, Herbert Suarnaba, 16 years old, along with his neighborhood friends, Jenny Aplaza (17 years old), Pedro Ramos (17 years old) and Rowell Lavega (17 years old) left 6th Street, Bacolod City and went to Plaza Mart, a shopping mall, where they loitered for about an hour or two. They decided to visit their friend, ‘Novieboy’ del Rosario, who used to be their neighbor at Purok Pag-asa but who ha[d] since transferred to Libertad Baybay. They took [a] jeepney and arrived there at around 3:00 P.M. They proceeded to the inner portion of the barangay, passing by several houses [o]n a footwalk to the house of ‘Novieboy’ del Rosario. They were welcomed by the latter and [they] then listened to music on the tape recorder. When ‘Novieboy’s’ mother arrived, she offered them ‘chorizo’ (sausage) which she brought with her from Kalibo.

“While peacefully enjoying themselves, they were suddenly startled by shouts coming from a group of men outside the house. Looking out, they saw about nine (9) men with their leader shouting: ‘Gua kamo dira, kay pamatyon ta kamo! Nga-a nagsulod-sulod kamo diri sa amon teritoryo? Gua kamo dira kay pamatyon ta kamo! (You there, get out and we will kill you!) The four (4) teen-agers were terrified since they did not know the men who were threatening them. Nor did they know of any grudge or misunderstanding between their group and the men outside. They then called Mrs. Del Rosario (‘Novieboy’s’ mother) who advised them not to go out of the house and called for the police. However, after waiting for some time, no police assistance came. Mrs. Del Rosario then went out and returned with four (4) barangay tanods. The tanods entered the house and talked to the teen-agers and assured them that no harm would come to them and that there would be a police ‘Bac[k]-up’ waiting for them at the road. The group was then escorted out of the house by the tanods and were accompanied by two (2) of them and Mrs. Del Rosario towards the footpath leading to the main road. It was already dusk by that time. The men threatening them were still outside when they went out of the house and they followed the group. When the group reached the main road, no police ‘Bac[k]-up’ was in sight but Mrs. Del Rosario remained with them.

“There was a single ‘trisikad’ (pedicab) outside and the four (4) boarded it. Since the pedicab could only accommodate two (2) persons inside, Rowell Lavega stood on the rail at the back of the pedicab while the victim sat in front.

“The pedicab had not left when Rowell saw a man running towards them from the footwalk. He was about 50 meters away when Rowell first saw him. The four jumped out of the pedicab when Mrs. Del Rosario and the people there shouted at them to run. Despite efforts by the barangay tanods to stop him, the man rushed headlong towards Rowell and the victim. He was about to strike at Rowell when Mrs. Del Rosario pushed Rowell to run. When Mrs. Del Rosario fell down as if to faint, the victim helped her stand up. Mrs. Del Rosario then told the victim to run and he ran around the pedicab more than a foot long. While the victim was running away trying to escape, the man holding the knife caught up with him and thrust his knife at the fleeing victim who was hit at the back. The victim fell and crawled, while gasping for breath, and he managed to enter a house pleading for help.

“Rowell saw what happened to his friend and wanted to help him but could not because the attacker was still there. After seeing the victim fall down, bloodied, his attacker ran towards the interior of the barangay. Meanwhile, Pedro, Jenny and Rowell ran as fast [as] they could because the companions of the attacker also came rushing out of the footwalk and were charging at them with drawn knives. They escaped being hurt when they sought refuge in the house of a friend at the opposite side of the basketball court. Mrs. Del Rosario fainted upon seeing the attack on the victim.

“Pedro and Rowell recognized the attacker as the one who earlier shouted at them while they were still inside the house of Mrs. Del Rosario. They stayed for about an hour inside the house of their friend where they sought refuge and there they learned that the man who chased them and struck the victim was known by the

nickname, 'Yawa' and is also known as Ronnie de la Peña although his real name is Sueene Discalsota. Much later, when the police finally came and investigated them, Pedro was shown pictures of the suspects and he picked out the picture of accused-appellant.

"Louie Gregorio, a reluctant witness who testified only on pain of arrest for contempt of court, declared that he was a 'live-in' partner of Nieves del Rosario; that while resting at the house of Nieves del Rosario around 4:00 P.M. of January 24, 1996, he confirmed that the victim and three (3) others were at the house and that no untoward incident happened while they were inside the house. Several minutes after the boys were escorted out of the house by four (4) barangay tanods, he learned that a stabbing incident happened outside and when he went out to investigate, he saw accused-appellant running towards the house of his girlfriend. He was only about five (5) armslength from accused-appellant who was carrying a bloodied long knife which he did not even bother to conceal. He heard accused-appellant shouting, 'Naigo ko gid!' (I got him). He also confirmed that Ronnie de la Peña is the same accused-appellant Sueene Discalsota.

"The victim was rushed to the Corazon Locsin Montelibano Memorial Hospital. He was still alive when the police and his mother arrived. However, he was already breathing heavily, in a critical condition, and could no longer respond. A few minutes later, he was pronounced dead by the doctor.

"Dr. Hildegard B. Madalag conducted the autopsy on the body of the victim and submitted a Report of his findings (Exhibit D). He confirmed his findings in open court and further testified that upon examination, he found the kidney of the victim completely 'transacted' or totally cut. The knife's entry point was at the back, a direct and straight thrust which went through three (3) vital organs – pancreas, stomach and the kidney, causing 'massive gastric spillage.' He gave the cause of death in the Certificate of Death (Exhibit E) as 'Hypo-volemic shock.'

"Despite lack of cooperation from the residents of the area where the incident happened, the police authorities were able to arrest accused-appellant on the identification of Pedro Ramos and Rowell Lavega." [7]

Version of the Defense

On the other hand, the Public Attorney's Office narrated appellants' version of the incident as follows:[8]

"SUEENE DISCALSOTA, denied that he was [the] one who stabbed and killed Herbert Suarnaba. He testified that in the afternoon of January 24, 1996, he was in their house at Purok Kingfisher, Libertad Baybay, Bacolod City, from 3:00 to 5:00 P.M. He was tending their store where he acted as cashier. His companion thereat were older sister Aileen and younger sister Yvette. He never left their store even after 5:00 P.M. When his mother Lilia Discalsota arrived from the Central Market she took over the chores in the store. He only learned that there was a stabbing incident on the following day (January 25, 1996).

"He learned that he was charged [with] Murder on April 7, 1997, when he was arrested by policemen in the house of his wife, Christina at Purok Tuliaw, Brgy. 16, Bacolod City. He was surprised when the policemen presented a warrant for his arrest. The policemen told him that he was involved in a murder case in Libertad, Baybay, Bacolod City in January 1996. He did not want to go with the policemen, but it was a certain Tiyo Erwin who prevailed upon him to go with the arresting officers. He was then brought to Bac[k]-up I and later to headquarters. He was subsequently detained at the 'Lock-up'.

"He further testified that he [did] not know Louie Gregorio, one of the witnesses for the prosecution. He [did] not know whether Louie Gregorio [was] the common law husband of Nieves del Rosario but he met her only at the City jail, when she visited her common-law husband Marcial Flores, in January 1998. Marcial Flores [was] his neighbor at Libertad, Baybay.

"Discalsota also denied leaving Libertad, Baybay, Bacolod City after the incident. He was there on January 25, 1996, and he was even able to leave their house that day. He continued staying in their house x x x until April 1996. Eventually their house was demolished in 1997 and his family transferred to Tangub. He nevertheless,

remained in the area and stayed with his wife at her house in Purok Tulinaw, which was just about 30 meters away from the house of Nieves del Rosario.

“He denied membership [in] any fraternity, much less U-2. He declared that ‘Yawa,’ x x x Ming, Michael Bartolo, Da-dan, were not his neighbors, but admitted they were residents of the place. These persons are members of Red-O fraternity. He denied knowing Ulysses Tonggoy. He admitted knowing x x x Alfonso one of the CVO’s mentioned by prosecution’s [witness] Alfonso de la Cruz. He mentioned that he [was] not ‘Yawa’ but one Stephen.

“EVETTE DISCALSOTA corroborated the testimony of Suenne Discalsota. She testified that she was tending their store the whole day of January 24, 1996. Her companions thereat were her brother, Sueene[;] and sister, Aileen. Their store opened at 7:00 A.M. and closed on that particular day, at 9:00 P.M. her brother Sueene never left the store from 7:00 A.M. to 9:00 P.M. Sueene was then acting as the cashier of their store.

“She also testified that she did not know that her brother Sueene was charged in court. When her brother was arrested she went to the police station and inquired why Sueene was detained and she was told he had a case. She then told the police that on the day the alleged stabbing was committed Sueene was

not able to leave the house the whole day.”[9]

Ruling of the Trial Court

The RTC ruled that appellant had positively been identified by the prosecution witnesses as the culprit responsible for the death of Herbert Suarnaba. It gave no credence to the denial and alibi proffered by appellant. It also appreciated evident premeditation and treachery as qualifying and aggravating circumstances, respectively, and thus sentenced him to death.

Hence, this automatic review before us.[10]

Assignment of Errors

In his Brief, appellant faults the trial court with the following alleged errors:

“I

The trial court gravely erred in finding accused-appellant guilty beyond reasonable doubt of the crime of murder as charged in the information despite the failure of the prosecution to prove the qualifying circumstances of evident premeditation and treachery.

“II

The trial court erred in imposing the death penalty upon the accused-appellant.”[11]

The Court’s Ruling

The appeal is partly meritorious.

Preliminary Matter

Appellant no longer questions the finding of the RTC that he stabbed and killed Herbert Suarnaba. However, an appeal in a criminal case opens the whole case to review. Thus, we shall still pass upon the matter.

The prosecution witnesses were one in identifying appellant as the person who had wielded a knife and stabbed the victim. Appellant had nothing to offer in his defense but an alibi corroborated by his two sisters. A careful scrutiny of the records shows no reason to disbelieve the prosecution witnesses and to overturn the court a quo’s finding that they were credible.

Basic is the rule that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and will not be disturbed on appeal in the absence of any showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance.[12]

Also, the RTC was correct in disregarding the alibi of appellant. As it aptly ruled, his “defense of alibi crumbles in the face of the positive identification of the accused by prosecution witnesses as being present in the scene of the crime.”[13]

First Issue:

Evident Premeditation and Treachery

Appellant contends that evident premeditation should not have been appreciated by the trial court as a qualifying circumstance.

It is settled that qualifying circumstances cannot be presumed, but must be established by clear and convincing evidence as conclusively as the killing itself.[14]

“[F]or evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself of the following elements thereof, viz: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination, and (c) sufficient lapse of time between the determination and execution to allow himself to reflect upon the consequences of his act.”[15]

In this case, the first two elements of evident premeditation are present. As found by the RTC, the time appellant determined to commit the crime was when he started shouting at the victim and the latter’s companions: “You, there, get out and we will kill you!” By staying outside the house and following the victim’s companions when they came out, he manifestly indicated that he clung to his determination.

As for the third element, the prosecution evidence shows that appellant started shouting outside Mrs. del Rosario’s house at 3:30 p.m.[16] When the victim’s group left the house, it was not yet dark;[17] it was only past four o’clock in the afternoon.[18] The police received information on the stabbing incident at 4:30[19] p.m. on the same day. It took less than an hour from the time appellant evinced a desire to commit the crime, as manifested by his shouts outside the house, up to the time he stabbed the victim. The span of less than one hour could not have afforded the former full opportunity for meditation and reflection on the consequences of the crime he committed.

The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection on the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[20]

“To justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warning.”[21]

Where no sufficient lapse of time is appreciable from the determination to commit the crime until its execution, evident premeditation cannot be appreciated.[22] Hence, the lower court erred in holding that evident premeditation qualified the killing to murder.

No Treachery

Appellant also argues that treachery did not attend the commission of the crime.

There is treachery when the offender commits any of the crimes against persons employing means, methods, or forms of attack that tend directly and specially to insure the execution of the crime without risk arising from the

defense that the offended party might make.[23]

“For treachery to exist, two essential elements must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the said means of execution was deliberately or consciously adopted.”[24] Treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.[25]

In the present case, the victim had the opportunity to escape or to defend himself. Before he and his group left the house of Mrs. del Rosario, they had already been forewarned of violent aggression from appellant, whose words and stance while outside the house made its imminence clear. The mode of attack adopted by appellant was not without risk to himself; neither was it sudden. When he began his menacing approach, he was visible to the victim and the latter’s companions. Appellant was out in the open and thus at risk from any defense which the group might make. The presence of such risk and the existence of ample opportunity for the victim to escape or defend himself negated treachery.

Second Issue:

Proper Penalty

In his Brief, appellant further claims to have been a minor at the time of the commission of the crime. This matter was, however, not raised during the trial. Furthermore, in his direct examination held on June 11, 1998, he stated for the record that he was a 20-year-old married man. Hence, we cannot agree to appreciate minority as a privileged mitigating circumstance.

Absent any qualifying circumstance, appellant may be convicted of homicide only. Considering further the absence of any aggravating or mitigating circumstance, the imposable penalty of reclusion temporal should be in the medium period[26] and encompassed by the Indeterminate Sentence Law.

Damages

We affirm the RTC’s award of P50,000 as civil indemnity and P30,000.00 as moral damages. However, the grant of actual damages should be reduced to P10,890, since this is the only amount duly supported by a statement of account and receipts. “To justify an award of actual damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss.”[27]

WHEREFORE, the appeal is PARTLY GRANTED. Appellant is CONVICTED of homicide and is SENTENCED to an indeterminate penalty of 10 years of prision mayor medium as minimum to 17 years and 4 months of reclusion temporal medium as maximum. The grant of civil indemnity and moral damages is AFFIRMED, but that of actual damages is reduced to P10,890. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Ynares-Santiago, De Leon Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Penned by Judge Pepito E. Gellada.

[2] Assailed Decision, pp. 40-41; rollo, pp. 58-59; records, pp. 266-267.

[3] Rollo p. 9; records, p. 1.

- [4] Atty. Rosalinda Isuga.
- [5] Order dated July 9, 1997; records, p. 25.
- [6] The Brief was signed by Solicitor General Ricardo P. Galvez, Asst. Solicitor General Carlos N. Ortega and Solicitor Benilda V. Abrasia-Tejada.
- [7] Appellee's Brief, pp. 5-12, rollo, pp. 164-171.
- [8] Appellant's Brief was signed by Attorneys Arceli A. Rubin, Teresita S. de Guzman and Francisco L. Salomon of the Public Attorney's Office.
- [9] Appellant's Brief, pp. 6-9; rollo, pp. 84-87.
- [10] This case was deemed submitted for resolution on September 14, 2000, upon receipt by the Court of the appellant's Reply Brief.
- [11] Appellant's Brief, pp. 1-2; rollo, pp 79-80. Original in upper case.
- [12] *Caca v. Court of Appeals*, 275 SCRA 123, July 27, 1997; *People v. Zumil*, 275 SCRA 182, July 8, 1997.
- [13] Decision p. 29; rollo, p. 47, citing *People v. Narca*, 275 SCRA 696, July 21, 1997.
- [14] *People v. Tabones*, 304 SCRA 781, March 17, 1999.
- [15] *People v. Academia Jr.*, 307 SCRA 229, 235, May 18, 1999, per Puno, J.
- [16] TSN, October 15, 1997, p. 15.
- [17] *Ibid.* p. 127.
- [18] TSN, August 12, 1997, p. 10.
- [19] TSN, July 30, 1997, p. 11.
- [20] *People v. Durante*, 53 Phil. 363, August 23, 1929; *People v. Bibat*, 290 SCRA 27, May 13, 1998; *People v. Rabanillo*, 307 SCRA 613, May 26, 1999.
- [21] *People v. Felix*, 297 SCRA 12, 27, October 1, 1998, per Davide Jr., J. (now CJ), citing *US v. Gil*, 13 Phil. 530.
- [22] *People v. Medina*, 286 SCRA 44, February 6, 1998.
- [23] Article 14 (16), Revised Penal Code.
- [24] *People v. Felix*, 297 SCRA 12, 26-27, October 1, 1998, per Davide Jr., CJ.
- [25] *Ibid.*
- [26] Article 64, paragraph 1, Revised Penal Code.
- [27] *People v. Nestor Macandog*, GR Nos. 129534 & 1411691, June 6, 2001, per Gonzaga, J., citing *People v. Marollano*, 276 SCRA 84, July 24, 1997, in turn citing *People v. Rosario*, 246 SCRA 658, July 18, 1995.

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