

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CAYETANO MOSENDE Y MORATA, ACCUSED-APPELLANT.***G.R. No. 137001. December 05, 2001*

Ponente: VITUG, J.

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On the evening of 22 March 1998, Leticia Zabala Sapupo was alone with her two sleeping children at her residence in Wawa III, Rosario, Cavite. Her husband, a barangay tanod, had left the house to conduct a night patrol in the neighborhood. She would, now and then, look through the window opening to see if he was already back. At about 10:00 p.m., peeping out, she saw Cayetano "Tano" Mosende, leaning on the fence, just arms away from where she stood. He was wearing the same clothes when she saw him drinking at the store earlier that afternoon. The vicinity was sufficiently illuminated from neighboring houses and a nearby construction site. Mosende was unaware of being watched because she by then had the lights in the house turned off. "Tano" was known in the neighborhood of closely-knit urban dwellers as being a habitual drunkard and troublemaker when inebriated. Leticia saw Mosende walk towards the mango tree where Enrique Sefriuto, popularly called by neighbors as "Andrew," was lying face up on a nearby bench. Moments later, Andrew stood up and walked some distance away to urinate. Mosende also rose, entered the yard and positioned himself behind Andrew while the latter was relieving himself. When Andrew faced "Tano," the latter, without warning, stabbed the unsuspecting victim twice at the left portion of the abdomen. The wounded Andrew yelled, "Inay, may tama ako, sinaksak ako ni `Tano!'"

Leticia Sapupo was a few meters away from the two men. Recovering from the shock, Leticia sprung to call for help. She recounted that immediately after stabbing Andrew, "Tano" ran towards his house, which was just two arms length from the residence of the victim. Relatives immediately brought him to the Grace Hospital in Rosario, Cavite, but the young man had expired upon arrival at the hospital grounds. He was only twenty-nine years old. Barangay officials arrested Mosende.

Jenny Sefriuto, the mother of the deceased, was in her house in Boracay, Wawa III, Rosario, Cavite, with her two sons and a daughter when she heard Andrew shout, "Inay, sinaksak po ako ni `Tano!'" Jenny rushed out and saw her bloodied son. Jenny said that Andrew and Mosende must have had some kind of misunderstanding because, days prior to the incident, Mosende had come to their house to ask forgiveness from her son. Jenny Sefriuto, however, had no idea of the nature of their misunderstanding.

Joseph Sefriuto, a brother of the victim, was inside the house when he heard his brother yell that he was stabbed by Mosende. When Joseph opened the door, he was completely aghast. He beheld the wounded Enrique who kept pointing at the nearby house of Mosende.

Henry de la Cruz, the victim's brother-in-law, assisted Joseph Sefriuto in bringing Andrew to the hospital. Although quite weakened, Andrew was still alive when he was brought by tricycle to the hospital. Enroute to the hospital, he began to utter that it was "Tano" who had stabbed him.

On 17 June 1998, an Information was filed against Cayetano Mosende charging him with the killing of Enrique (Andrew) Sefriuto.

"That on or about the 22[nd] day of March 1998, at Sitio Boracay, Barangay Wawa III, Municipality of Rosario, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, being then armed with a fan knife (balisong), and with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab the person of Enrique (Andrew) Sefriuto, inflicting upon the said victim stab wounds on the left thigh, thereby causing his subsequent death, to the damage and prejudice of the legal heirs of said victim." [1]

The accused, Cayetano Mosende y Morata, denied any involvement in the crime. He testified that on the evening of 22 March 1998, he went to the house of his sister in Little Baguio, Wawa III, so that he and his brother-in-law could go out fishing. When he arrived, his brother-in-law begged off. With the unexpected change in plans, the accused decided to stay for a while. It was already 11:00 in the evening when he made his homeward trek. At midnight, he was taken aback when a barangay came to take him to the municipal hall to account for the death of Enrique Sefriuto.

Parenthetically, when the trial court asked the accused about the apparent incongruence between his testimony and the earlier defense theory of self-defense, previously manifested by counsel, no explanation was proffered.

On 07 December 1998, the Regional Trial Court of Cavite, giving credence to the case for the prosecution, convicted the accused of the crime charged and sentenced him to suffer the extreme penalty of death -

"WHEREFORE, in view of all the foregoing considerations, this court hereby finds the accused Cayetano Mosende y Morata guilty beyond reasonable doubt of the crime of Murder, as charged in the Information, qualified by treachery and aggravated by evident premeditation and intoxication, and accordingly hereby sentences him to suffer the supreme penalty of death, and is hereby ordered to pay the heirs of the victim Enrique (Andrew) Sefriuto the amount of P50,000.00 as death indemnity." [2]

In this automatic review of his case, appellant ascribes error to the trial court in giving more weight to the testimony of the prosecution witnesses than that of his own.

Regrettably, the records of the case fail to indicate anything of substance that can warrant a reversal of the judgment of conviction. Appellant, however, is correct in seeking a modification of his death sentence.

Neither the defense of denial nor the tender of alibi can prevail over the strong evidence presented by the prosecution. Surely, his acquittal cannot be made to rest solely on a self-serving testimony. Appellant claims to have been in the house of his sister in Wawa III on the night in question but the residence of appellant's sister is not that distant away from the place of the incident. In order that alibi can prosper an accused must be able to show that it would not have been possible for him to be physically present at the place of the crime or its vicinity at the time of its commission. [3] The defense has miserably failed to make its point in this respect.

Furthermore, the defense theory would be no match against the unwavering identification made by eyewitness [4] Leticia Sapupo who, in her testimony, was positive and unyielding when she pointed to appellant as being the person who killed Enrique Sefriuto -

"Q.

Can you tell us what was that unusual incident?

"A.

When I peeped through the window, I saw this 'Tano' leaning on the fence or wall of our neighbor, I was just

one arm length away from him, sir.

"Q.

Do you know the complete name of this `Tano?'

"A.

Cayetano Mosende, sir.

"Q.

What was he doing at that time?

"A.

He was just leaning there, sir, but I saw on the part of his body (witness pointing to her left waist), that he had a knife with him which was still folded, sir.

"Q.

After you saw him with the knife, what happened next when you saw him holding the knife?

"A.

After a while I saw him walking towards the mango tree, sir.

"Q.

Considering that it is already 10:30 in the evening, how were you able to see him?

"A.

The place was lighted because there was a light in our neighbor's place that illuminated the place and at the other side of the fence there were people doing some construction work at the subdivision, and the spotlight of the place was focused on the other side, sir.

"Q.

Then, what happened next after that?

"A.

After a while, I saw this Andrew lying face up on the bench near the fence, sir.

"Q.

At that time you saw this Andrew lying on the bench, where was `Tano,' then?

"A.

He was still there seated along the mango tree, sir.

"Q.

How far was this mango tree from where this Andrew was lying?

"A.

Maybe about four arms length away, sir.

"Q.

After that, what happened?

"A.

Then I saw this Andrew stand up and he went outside of their kitchen, sir.

"Q.

After that, what happened next?

"A.

He was urinating sir.

"x x x x x x x x

"Q.

While this Andrew was urinating, what happened next?

"A.

I saw Cayetano stand up, sir.

"Q.

After he stood up, what happened?

"A.

He was going towards the fence then he went inside [the fence], sir.

"Q.

Inside of where?

"A.

Inside the fence, sir.

"Q.

Whose place?

"A.

Andrew's house, sir.

"Q.

After this `Tano' entered the gate, what happened?

"A.

When `Tano' faced Andrew, `Tano' stabbed Andrew, sir.

"Q.

How many times?

"A.

Two times, sir.

"Q.

After this `Tano' stabbed Andrew, what happened next?

"A.

I heard Andrew shout, `Inay, may tama ako, sinaksak ako ni `Tano!'

"Q.

If this `Tano' or Cayetano Mosende is in court, will you be able to point to him?

"A.

He is there, sir. (Witness pointed to the accused who identified himself as Cayetano Mosende).

"Q.

After `Tano' stabbed this Andrew, what happened next?

"A.

He went out going towards their house because the house of that person whom he stabbed is just two arms length away from their house, sir."[5]

The eyewitness account of Leticia Zabala Sapupo, against whom no ill-motive against appellant could be intimated, was bolstered by the testimony of the victim's mother Jenny Sefriuto, his brother Joseph Sefriuto and his brother-in-law Henry de la Cruz. The additional three witnesses, in brief, testified:

Testimony of Jenny Sefriuto -

"Q.

While you were in your house on same date and time, can you recall of any unusual incident that happened?

"A.

Yes, Sir, there was.

"Q.

And, what was that?

"A.

It was a shout, Sir.

"Q.

Can you tell us who made the shout?

"A.

Andrew, Sir.

"Q.

What was the exact words?

"A.

He shouted the words, 'Inay, inay, sinaksak po ako ni Tano!'

"Q.

Do you know to whom your son was referring, to this Tano?

"A.

Yes, Sir.

"Q.

Can you tell us the full name of this Tano?

"A.

Cayetano Mosende, Sir."[6]

Testimony of Joseph Sefriuto -

"Q.

What exactly were the words of your brother?

"A.

I asked him what happened and then he pointed to the house of Cayetano Mosende and uttered the words, 'Sinaksak ako niyan.'

"x x x x x x x x

"Q.

What did your brother say?

"A.

I was stabbed by 'Tano.' (Sinaksak ako ni 'Tano')"[7]

"A.

I loaded him in the tricycle. While we were already inside the tricycle, and I was holding unto him, and the tricycle started to move, that was the time your Honor, when he said, 'Sinaksak ako ni 'Tano.'"[8]

Testimony of Henry de la Cruz

"Q

After you heard the shout of your mother-in-law, what happened next?

"A

I saw my brother-in-law being carried by a certain Joseph, Sir, and when I saw them, I also carried my brother-in-law and brought him to the hospital.

"Q

How did you bring him to the hospital?

"A

I was holding him, Sir, and I loaded him in a tricycle.

"Q

Can you tell us the condition of your brother-in-law at that time?

"A

He was still alive, Sir.

"Q

While you were bringing him to the hospital, was there any conversation that transpired between you and your brother-in-law?

"A

He just said that he was stabbed by Tano, Sir.

"Q

Do you know this Tano whom your brother-in-law is referring to?

"A

Yes, Sir.

"Q

Why do you know him?

"A

Because he is a resident of the place, Sir."^[9]

While it was not adequately shown that the statements testified to were said by the victim with knowledge of his impending death that would qualify the utterances to be dying declarations, the statements, nevertheless, could be taken as being part of *res gestae*.

Utterances are considered part of *res gestae* when made immediately after a startling occurrence. The admission of such utterances are based on the well-founded belief that words spoken instinctively at the time of a specific transaction or event, without the opportunity for the speaker to effectively concoct a fabricated version of the startling event, can only be but credible.

In finding treachery, the court *a quo* held that the stealth with which accused-appellant followed his victim, his act of positioning himself behind the latter and the swiftness with which he stabbed him were circumstances that could only amount to treachery.

The Court agrees. Treachery is present when the offender employs means, methods or forms in the execution of an offense which tend to directly and specially ensure its accomplishment without risk arising from the challenge that the offended party might make.^[10] Where the attack is so sudden and unanticipated that the victim finds himself with hardly any chance to defend himself or to evade the aggression, treachery must be held to exist.

In this case, it would appear that appellant, upon seeing Enrique Sefriuto rise and proceed to the fence to urinate,

himself stood up and followed surreptitiously. Appellant then proceeded to quietly position himself behind his intended victim while the latter, still half-awake from sleep, relieved himself. Suddenly and without any warning, appellant repeatedly stabbed the unsuspecting victim.

In imposing upon appellant the penalty of death, the trial court considered the aggravating circumstances of evident premeditation and intoxication.

In essence, evident premeditation refers to the deliberate planning of an act before its execution. It takes into account the cool thought and reflection upon a resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment before the actual execution of the criminal act.[11] Evident premeditation requires an appreciable time as the offender so determines to commit the crime; an act manifestly indicating that the culprit has clung to his resolve, and an adequate duration between such determination and execution in order to allow his conscience to overcome his resolve.

The various accounts given by the witnesses, however, would fail to indicate pertinent facts that could establish evident premeditation. While the mother of the victim, Jenny Sefriuto intimated a standing feud between appellant and her son, she herself testified, however, that, days before, Mosende had repaired to their house to ask forgiveness from Enrique who forthwith forgave his would-be assailant. In any event, the fact alone that appellant could have nursed a grudge or resentment against his victim would not be enough to constitute proof of evident premeditation.[12] The eyewitness account of Leticia Sapupo itself only related to details immediately before and during the commission of the crime.

The court a quo, in considering the aggravating circumstance of intoxication, gave much weight to the testimony that appellant was so identified as a habitual drunkard. While Leticia Sapupo testified to having seen Mosende drinking an alcoholic beverage at a store earlier the afternoon of the incident, nothing would show that he was in any state of intoxication or in drunken condition when the dastardly deed was being committed.

The crime of murder is punishable by reclusion perpetua to death. Article 248 of the Revised Penal Code provides:

"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.

"2. In consideration of a price, reward or promise.

"3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

"4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

"5. With evident premeditation.

"6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by Sec. 6, RA No. 7659.)

Treachery qualified the killing to murder but, there being no other aggravating circumstance shown, the penalty that can only be imposed is reclusion perpetua.

The civil indemnity decreed by the trial court accords with prevailing jurisprudence. In addition, moral damages and exemplary damages must be held to be due. Article 2219(1) of the Civil Code ordains that moral damages may be recovered in a criminal offense resulting in physical injuries. In its generic sense, "physical injuries" includes death. Moral damages compensate for the mental anguish, serious anxiety and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of pecuniary loss.[13] The presence of the aggravating circumstance of treachery[14] likewise warrants, under Article 2230 of the Civil Code, the payment of exemplary damages.

WHEREFORE, the decision of the Regional Trial Court of Cavite finding Cayetano Mosende y Morata guilty beyond reasonable doubt of the crime of murder is AFFIRMED with MODIFICATION in that the sentence imposed upon him is hereby reduced from death to reclusion perpetua. The award of P50,000.00 civil indemnity to the heirs of the victim Enrique Sefriuto is reiterated; in addition, P50,000.00 moral damages and P20,000.00 exemplary damages are also ordered to be paid by appellant to the heirs of the victim. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Buena, J., on official leave.

[1] Records, p. 1.

[2] Rollo, p. 24.

[3] People vs. Balisoro, 307 SCRA 48.

[4] People vs. Banela, 301 SCRA 84; People vs. Hillado, 307 SCRA 535.

[5] TSN, 28 July 1998, pp. 4-6.

[6] TSN, 28 July 1998, pp. 41-42.

[7] TSN, 04 August 1998, pp. 5-17.

[8] TSN, 18 August 1998, pp. 13-14.

[9] TSN, 18 August 1998, p. 5.

[10] People vs. Velaga, Jr., 199 SCRA 518.

[11] People vs. Durante, 53 Phil 363.

[12] People vs. Lacao, 60 SCRA 89.

[13] People vs. Bantillo, G.R. No. 117949, 23 October 2000.

[14] People vs. Catubig, G.R. No. 137842, 23 August 2001.

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