

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARTURO NICOLAS Y RINGOR, APPELLANT.

G.R. No. 137782. April 01, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 66, Makati City, finding appellant Arturo Nicolas y Ringor guilty beyond reasonable doubt of murder for the killing of Delbie Bermejo (the victim) and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim the amount of P127,500.00 as liquidated damages and P50,000.00 as moral damages.

In an Information[2] dated January 5, 1998, appellant was indicted as follows:

That on or about the 1[st] day of January, 1998, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill and by means of treachery, did then and there willfully, unlawfully and feloniously shoot one DELBIE BERMEJO y VELASCO hitting him on his neck and breast, thereby inflicting serious and mortal wounds upon the latter which directly caused his death.

CONTRARY TO LAW.

Upon arraignment[3] on February 5, 1998, appellant, assisted by counsel, entered a plea of not guilty. Thereafter, trial on the merits ensued.

Culled from the records of the case are the following facts established by the prosecution:

On January 1, 1998, at about 1:30 a.m., the victim, his two children Ruby and Rodel and nephew Ariel Bermejo were walking along a small alley in Makati City after attending a New Year's party at a relative's house. Behind them was appellant Arturo Nicolas, a dismissed Army Sergeant, who greeted the victim[4] and his nephew Ariel.[5] The victim, in turn, greeted appellant.[6] Suddenly, a gunshot was heard by the victim's companions and on turning around to see what had happened, they saw him falling to the ground as appellant was pointing a gun at him.[7] Terrified at what she saw, Ruby ran and went home to engage the help of others to aid her in bringing her father to the hospital.[8] In the meantime, as Ariel remained where he was, he saw appellant shoot the victim, prompting him to run and report the incident to a relative, Ernesto Suante.[9]

The victim was brought to the Makati Medical Center where he was pronounced dead on arrival.[10]

The postmortem examination conducted by Dr. Tomas Suguitan of the Philippine National Police Crime Laboratory, Medico Legal Division, in Camp Crame, Quezon City showed that the victim sustained two gunshot wounds, one at the left side of his nape and the other at the left side of his chest.[11] It also showed that he had four abrasions on his knees, forehead and shoulder,[12] which Dr. Suguitan surmised were caused by the victim's fall when he was shot.[13] The doctor concluded that the cause of the victim's death was hemorrhage as a result of gunshot wounds of his neck and trunk.[14]

Finding for the prosecution, the trial court found appellant guilty beyond reasonable doubt of murder by Decision of February 10, 1999, the dispositive portion of which is quoted verbatim:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Arturo Nicolas y Ringor guilty beyond reasonable doubt of the crime of murder with the qualifying circumstance of treachery and the Court hereby sentences him to suffer, taking into consideration the absence of aggravating and mitigating circumstance, the penalty of reclusion perpetua and to pay the heirs of Delbie Bermejo the sum of P50,000.00 as moral damages and the sum of P127,500.00 as liquidated damages.

SO ORDERED.[15]

Hence, the present appeal anchored on the following assigned errors:

- THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED IS [NOT] ENTITLED TO AN ACQUITTAL BASED ON THE FOLLOWING GROUNDS:
- NO MOTIVE FOR THE KILLING WAS ESTABLISHED;
- THE GUN WHERE THE BULLETS WERE FIRED WAS NOT RECOVERED NOR PRESENTED;
- THE BALLISTIC REPORT ON THE THIRD SNUG (sic) ALLEGEDLY SURRENDERED BY THE ACCUSED WAS NOT PRESENTED;
- THE RESULT OF THE PARAFFIN TEST CONDUCTED ON THE ACCUSED WAS NOT PRESENTED.
- THE TRIAL COURT ERRED IN FINDING THAT ACCUSED WAS GUILTY BEYOND REASONABLE DOUBT.[16]

Appellant argues that as the prosecution failed to establish any motive for the killing of the victim with whom he was not acquainted, he had no reason for killing him. He also argues that the failure of the prosecution to present any witness who could testify that he owned a .9 mm pistol, the type of firearm from which the slugs recovered from the crime scene were fired, infirms the evidence against him as does the failure to recover or present to the court the gun used in the perpetration of the crime.

Appellant then zeroes in on the failure of the prosecution to present the ballistic examination report on the empty shell of a .9 mm pistol forwarded to the Crime Laboratory which SPO2 Nestor Valenzuela claimed in the Final Investigation Report[17] was surrendered by him (appellant). To appellant, such failure likewise infirms the evidence for the prosecution.

Finally, appellant asserts that the testimonies of the prosecution witnesses are replete with inconsistencies which warrant his acquittal.

Upon the other hand, appellant harps on alibi to exculpate him from any liability, he claiming that at the time of the incident, he was at home celebrating the New Year with his wife and three children.[18]

The appeal is bereft of merit.

Appellant was positively identified as the assailant by two credible eyewitnesses. The victim's nephew Ariel testified thus:

Q: On January 1, at around 1:30 a.m. 1998, where were you?

A: We were about to go home together with my uncle at Blueberry Street.

Q: Where is this located?

A: Makati City.

Q: Who were with you when you were going home Mr. witness?

A: Delbie Bermejo and his two children.

Q: What are the names of his two children?

A: Ruby Bermejo and Rodel Bermejo.

Q: And do you remember of (sic) any untoward incident which happened at that time when you were walking home?

A: There was a sudden shot and as I turned my back I saw the accused Arturo Nicolas holding and pointing the gun at my uncle then he fired the gun and ran away.

Q: Do you recall where the gun was pointed at your uncle?

A: At his body, Sir.

Q: The first shot (sic) that was allegedly fired by the accused, which part of the body of your uncle was he (sic) shot?

A: Hindi ko po alam yung unang putok kung saan nanggaling dahil nakatalikod po ako but on the second shot I looked back and I saw the accused pointing his gun to (sic) my uncle who was about to fall down and he again fired at my uncle.

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Q: For the record, you were referring to the gunman in this case, could you please point him out to the Honorable Court – the person that shot your uncle.

A: Ayun po.

Interpreter: Witness pointed to a man wearing an orange T-shirt who when asked stood up and answered by the name of Arturo Nicolas.[19] (Italics supplied.)

And the victim's thirteen year old daughter Ruby testified thus:

Q: Do you know how your father was shot?

A: Yes, Sir.

Q: Why do you know Miss witness?

A: Because I was there when he was shot, Sir.

Q: Do you recall where he was shot?

A: Yes, Sir.

Q: Where?

A: Sa eskinita po. (small alley)

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Q: Who shot your father?

A: Arturo Nicolas, Sir.

Q: Will you please point him out to this Court.

A: Siya po. (witness pointing).

Interpreter: Witness pointed to a man wearing orange T-shirt who when asked:

Q: Pangalan nyo po?

A: Arturo Nicolas.

Q: Do you recall how the accused shot your father Miss witness?

A: Yes, Sir.

Q: How, paano, ipakita mo.

A: When we were about to go home coming from my uncle's house because we attended a New Year's party, I saw the accused at the corner who was about to enter the "eskinita" and at that time my father's hand was on top of my shoulder (akbay-akbay ako), he greeted my father "Hi". My father allowed me to go ahead because of the small alley and while I was walking I suddenly heard a shot and when I turned my back I saw the accused pointing the gun at my father.

Q: And then what did you do next Miss witness?

A: Because I was very much scared, I ran away.[20]

There is no reason to doubt the veracity of the testimonies of Ariel and Ruby, there being no indication that they were actuated by any improper motive[21] to falsely testify against appellant, their relationship to the victim notwithstanding. In fact, relationship could even strengthen the witnesses' credibility, it being unnatural for aggrieved relatives to falsely accuse someone other than the actual culprit,[22] for their natural interest in securing the conviction of the guilty would deter them from implicating any other.[23]

As for the prosecution's failure to prove appellant's motive for the killing, motive is not an element of the crime of murder, hence, it does not have to be proved.[24] It becomes material only when the evidence is circumstantial or inconclusive, and there is doubt whether a crime has been committed or whether the accused has committed it.[25] Ample direct evidence having been presented through the testimonies of Ruby and Ariel who identified appellant as the perpetrator, appellant's motive is immaterial.[26]

With respect to the instrument used in the killing of the victim, its presentation is not indispensable in the prosecution of the accused.[27] The weapon used in the killing, after all, is also not an element of the crime of murder.[28] Thus, this Court held in *People v. Bello*: [29]

For purposes of conviction, it is enough that the prosecution establishes by proof beyond reasonable doubt that a crime was committed and the accused is the author thereof. The production of the weapon used in the commission of the crime is not a condition sine qua non for the discharge of such burden, for the same may not have been recovered at all from the assailant. (*Italics supplied.*)

Neither is the presentation of a witness to testify that appellant owned or was in possession of a .9 mm pistol. Besides, it is not for the courts, much more the defense, to dictate what evidence to present or who should take the witness stand at the trial of a case.[30] As this Court held in *People v. Bulfango*: [31]

The prosecution has the exclusive prerogative to determine whom to present as witnesses. The prosecution need not present each and every witness but only as may be needed to meet the quantum of proof necessary to

establish the guilt of the accused beyond reasonable doubt.

As for appellant's insistence on his innocence in view of the absence of the results of the paraffin test he undertook, the same is unavailing. Suffice it to state that even negative findings of a paraffin test do not conclusively show that a person did not discharge a firearm at the time the crime was committed.[32] For absence of nitrates is possible if a person discharged a firearm with gloves on, or if he thoroughly washed his hands thereafter.[33]

Unavailing too is appellant's argument that the presentation of the ballistic report on the third slug allegedly surrendered by him is "very vital for the Prosecution since if the Ballistic Report will show that this shell was fired from the same gun where the other slugs recovered came from, then there is a strong possibility that the accused was indeed the same person who killed the victim." [34] For, even without the ballistic report, the positive identification by prosecution witnesses Ariel and Ruby of appellant as the assailant is more than sufficient to prove his guilt beyond reasonable doubt.

Appellant next focuses on the prosecution witnesses' claim that the victim was twice shot from behind which is belied, so he claims, by the finding of Dr. Suguitan that the point of entry of the second shot was at the victim's left chest. Appellant does not dispute, however, that the point of entry of the first shot was at the left portion of the victim's nape. Given these, the plausible explanation is that the victim was initially shot from behind, hitting the left portion of his neck, after which he turned towards appellant at which instant he was shot again, this time hitting his chest. Appellant's proposition that had the trial court not overlooked such "discrepancy," his acquittal would have been in order does not thus lie.

The alleged inconsistencies in the testimony of Ariel with respect to the position of the victim when the second shot was fired are just minor and collateral matters which do not affect the substance, veracity or weight of the witness' testimony.[35]

Appellant's alibi thus fails vis-à-vis the positive and categorical assertion of prosecution witnesses.[36] It is worthless, considered with suspicion and always received with caution not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.[37] Being negative in nature and self-serving, it cannot secure worthiness more than that placed upon the testimonies of prosecution witnesses who testify on clear and positive evidence.[38]

In any event, for the defense of alibi to prosper, it is not enough to show that the accused was somewhere else when the crime was committed. He must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof.[39] Appellant glaringly failed in this regard. As correctly found by the trial court, the evidence shows that the residence of the accused at 47 Gladiola Street, Zone 8, Barangay Rizal, Makati City, where he claimed to be with his family when the crime was perpetrated is only about 300 meters away from the locus criminis at Blueberry Street, Aranay Village, Barangay Rizal, Makati City.[40]

As for the presence of treachery in the killing, the trial court correctly appreciated the same. The victim was caught defenseless when appellant suddenly shot him from behind as he was walking along an alley. The attack was so swift and unexpected that the victim who was unarmed could not have resisted. Whereas, on the other hand, appellant was not thereby exposed to any danger.

Appellant is thus guilty beyond reasonable doubt of murder, penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, with reclusion perpetua to death. There being no other modifying circumstance, the lesser penalty shall be imposed, pursuant to Article 63(2) of the Revised Penal Code.[41]

As to the civil aspect of the case, in line with prevailing jurisprudence, the award of indemnity to the heirs of the victim in the amount of P50,000.00 is affirmed.[42]

As for the award of the amount of P127,500.00 as actual damages, the same appears to have been based on the claim of the victim's sister Lilia Santilloza that the heirs incurred funeral, burial and miscellaneous expenses. She, however, merely presented two sheets of yellow pad containing a list[43] of the expenses allegedly incurred which cannot be considered as competent proof and cannot replace the probative value of official receipts to justify the award of actual damages. Article 2199 of the Civil Code explicitly requires that, except as provided by law or stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized in court.[44] The award of actual damages is thus deleted for lack of factual and legal basis. Nonetheless, accused-appellant should pay the heirs of the victim temperate damages under Article 2224 of the Civil Code in the amount of P10,000.00.

The award of moral damages in the amount of P50,000.00 is in order.[45] Additionally, given the attendance of the qualifying circumstance of treachery, the award to the heirs of the victim exemplary damages in the amount of P25,000.00,[46] in accordance with Article 2230 of the Civil Code,[47] is in order.

WHEREFORE, the appealed decision of the Regional Trial Court of Makati, Branch 66, finding appellant ARTURO NICOLAS y RINGOR guilty beyond reasonable doubt of Murder is hereby AFFIRMED. The civil aspect of the case is MODIFIED to read: Accused-appellant is hereby ORDERED to pay the heirs of Delbie Bermejo the amounts of P50,000.00 as civil indemnity for his death, P10,000.00 as temperate damages, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

Costs against appellant.

SO ORDERED.

Puno (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 15-18.

[2] Id. at 7.

[3] Records at 20.

[4] TSN, October 1, 1998 at 40.

[5] Records at 5.

[6] TSN, October 1, 1998 at 45.

[7] Id. at 25 and 40.

[8] Id. at 41.

[9] Id. at 28.

[10] Records at 2.

[11] TSN, October 1, 1998 at 12-13.

[12] Id. at 18.

- [13] Ibid.
- [14] Records at 51.
- [15] Rollo at 3-4.
- [16] Id. at 37.
- [17] Exhibit "I", Records at 60-61.
- [18] TSN, November 12, 1998 at 6-7.
- [19] TSN, October 1, 1998 at 24-29.
- [20] Id. at 37-41.
- [21] TSN, November 12, 1998 at 13.
- [22] People v. Ave, G.R. Nos. 137274-275, October 18, 2002.
- [23] People v. Bagcal, 350 SCRA 402, 410 (2001) (citation omitted).
- [24] People v. Cayetano, 223 SCRA 770, 777 (1993) (citation omitted).
- [25] People v. Galano, 327 SCRA 462, 473-474 (2000).
- [26] People v. Castillo, 273 SCRA 22, 32 (1997) (citation omitted).
- [27] People v. Chavez, 278 SCRA 230, 242 (1997).
- [28] People v. Piedad, G.R. No. 131923, December 5, 2002.
- [29] 237 SCRA 347, 352 (1994) (citation omitted).
- [30] People v. Ballagan, 247 SCRA 535, 546 (1995) (citation omitted).
- [31] G.R. No. 138647, September 27, 2002 (citation omitted).
- [32] People v. Acuram, 331 SCRA 129, 140 (1998).
- [33] People v. Oliano, 287 SCRA 158, 177 (1998) (citation omitted).
- [34] Rollo at 38.
- [35] People v. Bato, 325 SCRA 671, 677 (2000).
- [36] People v. Liwanag, G.R. No. 120468, August 15, 2001.
- [37] People v. Castillo, 273 SCRA 22, 32-33 (1997) (citation omitted).
- [38] People v. Alib, 322 SCRA 92, 100 (2000).
- [39] People v. Peralta, G.R. No. 133267, August 8, 2002.
- [40] Rollo at 94.
- [41] Art. 63. Rules for the application of indivisible penalties.

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In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall

be observed in the application thereof:

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2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[42] Arcona v. Court of Appeals, G.R. No. 134784, December 9, 2002.

[43] Exhibit “B”, Records at 52-53.

[44] People v. Bonifacio, G.R. No. 133799, February 5, 2002.

[45] People v. Panado, 348 SCRA 679, 691 (2000).

[46] People v. Catubig, 363 SCRA 621, 635 (2001).

[47] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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