PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELROSWELL MANZANO Y BREBONERA @ BOY ULO, ACCUSED-APPELLANT.

G.R. No. 138303. November 26, 2001

Ponente: PARDO, J.

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PARDO, J.:

Accused Elroswell Manzano y Brebonera @ Boy Ulo appeals from the Decision[1] of the Regional Trial Court, Branch 171, Valenzuela, Metro Manila finding him guilty beyond reasonable doubt of murder and sentencing him to reclusion perpetua and to pay the heirs of Ernesto Kasilag y Arwino P50,000.00 as death indemnity and the costs for funeral, burial, wake and other expenses in the amount of P30,700.00.

On August 1, 1995, Valenzuela City Assistant Prosecutor Magno T. Pablo, Jr. filed with the Regional Trial Court, Valenzuela, Metro Manila an information charging accused Elroswell Manzano y Brebonera with murder, as follows:

> "That on or about April 10, 1995 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery, evident premeditation and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack and repeatedly shoot one ERNESTO KASILAG, thereby hitting the latter on his left chest and on his back, thereby inflicting upon the said victim serious physical injuries which directly caused his death."[2]

On August 7, 1995, the trial court ordered the arrest of accused without bail.[3]

After almost a year, or on May 31, 1996, accused was arrested at around 6 o'clock in the evening in San Vicente Street, Karuhatan, Valenzuela, Metro Manila.

On June 19, 1996, the trial court arraigned the accused. He pleaded not guilty.[4]

Thereafter, trial ensued.

The prosecution presented evidence showing the following facts. At about 7:15 in the evening of April 10, 1995, Federico Acero, 14 years old, was chatting with his friends[5] in front of a plastic factory at Valenzuela, Metro Manila. Within a distance of about five (5) steps from where they were, Ernesto Kasilag y Arwino was smoking with his head bowed down. Ernesto was so quiet and he looked so sad.[6]

Fifteen (15) minutes later, accused Elroswell Manzano y Brebonera appeared from the interior and shot Ernesto whose head was still bowed. Though it was a bit dark, Federico clearly witnessed the incident because the accused was only five (5) steps away from him and his friends. As accused fired at the victim, Federico and his friends remained where they were seated and did not leave the scene of the crime.[7]

Thereafter, accused Elroswell approached his group. Accused removed his eyeglasses, fired a shot in the air and casually walked towards the highway. Meanwhile, despite his wounds, Ernesto was able to flee towards the house

of his kumpadre where he died. Federico and his friends followed the victim and there they found his lifeless and bloodied body.[8]

Federico knew both accused Elroswell and Ernesto. Both of them were his neighbors. He has known the accused for two (2) years, and the victim for about ten (10) years.[9] He volunteered to testify because his conscience bothered him.[10] When asked about what could have motivated the accused in killing the victim, he hinted that Ernesto might have been killed because the latter witnessed a burglary incident in an optical shop. Federico learned about this from the victim himself.[11]

Angelita Kasilag, Ernesto's wife, testified that three (3) days before her husband was shot, the latter told her that accused Elroswell harbored a grudge against him. Ernesto's exact words were: "Nay, kung sakaling may mangyari sa aking masama, isa lang ang dapat mong ireklamo, si Romeo Manzano."[12]

Angelita further testified that at the time of her husband's death, the latter was earning an average of one hundred fifty pesos (P150.00) a day by buying and selling bottles and junk materials.[13] As regards the funeral and burial expenses, she submitted an itemized list amounting to thirty thousand seven hundred pesos (P30,700.00).[14]

Based on the autopsy report of Dr. Bienvenido Muñoz, National Bureau of Investigation medico-legal officer, the cause of the death of the victim were the gunshot wounds.[15] Accordingly, the victim sustained the following injuries:

> "Pallor, conjunctivae and integument
>
> "Gunshot wounds:
>
> "1. Entrance, ovaloid, 0.7 x 0.8 cm., with a contusion collar widest at its upper border. Located at the anterior chest, level of 4[th] rib, left, 6.5 cm. from anterior median line, 120.0 cm. above left heel. Directed backward, downward and laterally, fracturing the 4[th] rib, into the left thoracic cavity, perforating the left ventricle of the heart and lower lobe of left lung and then perforating the diaphragm, into the abdominal cavity and lacerating the spleen, into the posterior thoracic wall, where a bullet was lodged and recovered at the level of 10[th] inter-costal space, left, 14.0 cm. from posterior medial line, 106.0 cm. above the left heel;
>
> "2. Entrance, ovaloid, 0.6 x 0.9 cm., with a contusion collar widest at its lower border. Located at the back, along posterior axillary line, left, 18.0 cm. from posterior median line, 125.0 cm. above left heel. Directed forward, upward and medially, involving skin and underlying soft tissues, non-penetrating and a bullet lodged and recovered at the chest, along anterior axillary line, left, 14.0 cm. from anterior median line, 127.0 cm. above left heel;
>
> "3. Entrance, ovaloid, 0.6 x 0.7 cm., with a contusion collar widest at its lower border. Located at the back, level of 9[th] rib, left, 7.0 cm. from posterior median line, 119.0 cm. above left heel. Directed forward, upward and from left to right, fracturing the 9[th] rib, into the left thoracic cavity and perforating the pulmonary artery, perforating the sternum and a bullet was lodged and recovered at the sternal region, right, 3.0 cm. from anterior median line, 122.0 cm. above right heel.
>
> "Hemothorax, right-1,100 c.c.; left-1,000 c.c.
>
> "Brain and other visceral organs, pale.
>
> "Stomach filled with rice and other food particles."[16]

Accused Elroswell Manzano interposed the defense of denial and alibi.

Accused testified that at around eight o'clock in the evening of April 10, 1995, he was taking care of his niece, Jennifer Castro, in the house of his sister Salvacion Castro, located at Phase IV-B, Package 8, Lot 16, Block 81,

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Bagong Silang, Caloocan City. Elroswell lived in Bagong Silang, Caloocan City from 1983 until 1996.[17]

Though he was staying at his sister's house in Bagong Silang, Caloocan City, accused Elroswell knew Ernesto by face.[18] He saw the latter whenever he visited his brother, Samuel Manzano, at No. 302 San Vicente, Karuhatan, Valenzuela, Metro Manila.[19] During those visits, he had the chance to play basketball with the deceased.[20] Accused brother's house in Karuhatan, Valenzuela was two (2) rides away from his sister's house in Bagong Silang, Caloocan City. It takes approximately an hour to travel the said distance.[21]

On May 27, 1996, accused Elroswell went to his brother Samuel's house to ask permission to apply for a job.[22] He was not able to work because on May 31, 1996, police authorities apprehended him.[23] The apprehending officers, who were wearing civilian clothes, presented a warrant of arrest bearing a different name (Romeo Manzano) and with an address different from where he was residing.[24] Despite his complaints that he was not the person named in the warrant, the police arrested and detained him.

He learned from one of the apprehending officers, PO3 Cesar J. Pineda of the Valenzuela Police Station, that he was the prime suspect in the murder of Ernesto Kasilag. Though he admitted that he knew about the incident, he denied any participation therein. He could not think of any reason why he would be implicated in the shooting incident, especially in light of the fact that he had no misunderstanding with the victim.

Salvacion Castro, a sister of the accused, corroborated what the latter said on the witness stand. She said that on the night of April 10, 1995, accused Elroswell Manzano was sleeping at her house.[25] Since 1982, her brother stayed with her family at Phase 4-B Block 81, Lot 16, Bagong Silang, Caloocan City.[26]

On May 27, 1996, Elroswell asked permission from Salvacion that he would go to their brother's house at No. 302 San Vicente Street, Karuhatan, Valenzuela to apply for a job. However, three (3) days later, Salvacion learned from their mother that police authorities have apprehended Elroswell and detained him at the Valenzuela Municipal Jail.[27] Their mother lived in the same house with her brother in Karuhatan, Valenzuela.

On March 31, 1999, the trial court rendered a decision finding accused guilty beyond reasonable doubt of murder, the dispositive portion of which reads:

> "WHEREFORE, accused Romeo Manzano alias Boy Ulo whose true name and identity is Elroswell Manzano is hereby sentenced to suffer Reclusion Perpetua and to pay the costs.
>
> "He is hereby ordered to pay the heirs of the deceased Ernesto Kasilag the amount of P30,700.00 for funeral, burial, wake and other expenses in connection with the death of the victim and the further amount of P50,000.00 as death indemnity.
>
> "SO ORDERED.
>
> "Valenzuela, Metro Manila, March 31, 1999.
>
> [Sgd.]
> "ADRIANO R. OSORIO
> Presiding Judge"[28]

In convicting accused Elroswell Manzano of murder, the trial court relied on the testimony of prosecution witness Federico Acero that it found to be credible. The profusion of details in his narration as to how the crime was perpetrated proved his physical presence at the scene of the crime and gave no reason for the court to doubt his testimony's veracity and accuracy. His deportment before the witness stand was candid and straightforward. Against this positive testimony, accused Elroswell's defense of denial and alibi can not prevail. The killing was attended by treachery, as the shooting was sudden and unexpected.[29]

On April 21, 1999, accused Elroswell Manzano y Brebonera filed a notice of appeal.[30]

On appeal, accused-appellant contended that the trial court manifestly erred in convicting him of the crime charged despite the fact that his guilt was not proved beyond reasonable doubt."[31]

The issue boils down to the credibility of the testimony of the lone prosecution eyewitness, Federico Acero. The Court has accorded the highest degree of respect to the findings of the trial court, unless the court has plainly overlooked certain facts of substance and value that if considered might affect the result of the case.[32]

In this case, we are convinced to the point of moral certainty that accused-appellant Elroswell Manzano y Brebonera was guilty of shooting Ernesto Kasilag.

Contrary to accused-appellant's allegation that Federico Acero's testimony was replete with loopholes and flaws, there were no inconsistencies in his statement. He described how accused-appellant shot the helpless victim. From out of nowhere and without any warning, accused-appellant approached the victim from behind, aimed and fired his gun at the said victim. Despite the efforts of the victim to flee from the scene, accused-appellant followed him and fired his gun again. Due to the multiple gunshot wounds he sustained, Ernesto Kasilag died.

Federico knew both the victim and the accused-appellant, they being his neighbors. From a distance of only five (5) steps from the victim when the latter was shot, coupled with the fact that both the victim and the accused-appellant were familiar to Federico, there could be no doubt that the latter unmistakably saw what transpired and recognized accused-appellant as the doer of the crime. The identity of a person is not established solely by the knowledge of the name of a person--familiarity with physical features particularly those of the face, is actually the best way to identify a person.[33]

In an attempt to further discredit witness Federico, accused-appellant alleged that it was just an afterthought on the part of the witness to impute criminal liability on him because it took Federico about a year to identify accused-appellant as the perpetrator of the crime. However, the lapse of a considerable length of time before a witness comes forward to reveal the identity of the assailant does not taint his credibility and his testimony, especially when there were valid reasons for such delay.[34] When confronted with a shocking incident, one may immediately report the incident to the proper authorities while another, in fear or avoiding involvement in a criminal investigation, may keep to himself what he had witnessed.[35]

As regards the allegation that the prosecution did not present any other corroborative witness, raising doubts as to the veracity of the claim that there were other people present when the shooting happened, suffice it to say that "truth is established not by the number of witnesses but by the quality of their testimonies."[36] The trial court found Federico's positive identification of accused-appellant as the perpetrator of the crime to be categorical, consistent, and straightforward. A witness who testifies categorically, spontaneously, frankly and consistently is a credible witness.[37]

Verily, criminals are convicted, not on the number of witnesses against them, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of doubt.[38]

Moreover, corroborative evidence is deemed necessary only when there are reasons to suspect that the witness did not tell the truth or that his observation had been inaccurate.[39] In the instant case, no error or ill-motive has been shown that may somehow cast doubt on the veracity of his testimony.

The fact that Federico Acero failed to identify the kind and caliber of the gun used in the killing was also raised as an issue. Accused-appellant posits that "the three (3) slugs recovered from the victim's body were irrelevant pieces

of evidence for it was not traced from what particular gun these slugs were fired."[40] Again, this contention must fail. The presentation and identification of the weapon used are not indispensable to prove the guilt of the accused-appellant.[41]

Accused-appellant harps on the fact that he did not flee from the scene of the crime, nor left his residence to hide from the authorities. He even went back to Karuhatan, Valenzuela a few months after to apply for a student permit. Clearly, he says, "the wicked flee even when no man pursueth, whereas the righteous are as brave as the lion."[42] However, non-flight is not a proof of innocence,[43] it is simply inaction, which may be due to several factors.[44] While flight may be an indicium of guilt, there is no case law holding that non-flight is conclusive proof of innocence.[45]

Furthermore, accused-appellant says, granting for the sake of argument that prosecution witness Federico Acero was indeed present at the crime scene, why then did he not help the victim when the latter was shot? He claims that this actuation, during and after the incident was contrary to human experience.[46] Yet, it is a fact that "witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut stand of behavior can be drawn.[47] Different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[48]

Considering accused-appellant's alibi, for this defense to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else.[49] Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of access between the two places.[50] Accused-appellant's claim that he was at the house of his sister Salvacion Castro in Bagong Silang, Caloocan City, even if true, did not preclude the possibility of his coming to the scene of the crime at Karuhatan, Valenzuela, which was just two (2) rides away, or which could be reached after approximately an hour. The Court is not convinced that it was physically impossible for accused-appellant to have left his sister's residence in Bagong Silang, Caloocan City to commit the crime in Karuhatan, Valenzuela and return to Bagong Silang, Caloocan City due to the proximity of the two places.

Alibi and denial can not prevail over the positive identification of accused-appellant as the perpetrator of the crime charged.[51] Positive identification, where categorical and consistent and without any showing of ill motive, prevails over alibi and denial, which if not substantiated by clear and convincing evidence, are negative allegations and self-serving evidence undeserving of weight in law.[52]

We affirm the finding of the trial court regarding the presence of treachery, qualifying the killing to murder. Without the slightest provocation, accused-appellant suddenly attacked from behind, depriving the unarmed Ernesto Kasilag of an opportunity to defend himself or retaliate. An unexpected and sudden attack under such circumstances which render the victim unable and unprepared to defend himself or retaliate by reason of the suddenness and severity of the attack constitutes alevosia.[53]

We agree with the Solicitor General that it was proper to award compensation to the heirs of the victim for loss of earning capacity, pursuant to Article 2206 of the Civil Code. Although the prosecution did not present documentary evidence to support this claim, testimonial evidence is sufficient to establish a basis for which the court can make a fair and reasonable estimate of damages for loss of earning capacity.[54] The unrebutted testimony of Angelita Kasilag is sufficient basis for the award. At the time of his death, Ernesto, thirty-three years old, was earning an average of P150.00 a day buying and selling bottles and junk materials.[55] If not for his untimely death, he would have earned more for his family. The additional compensation for loss of earning

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capacity would be computed based on the following formula:[56]

> Net earning capacity = (Life) x (Gross Annual
> Income-Necessary Living Expectancy)
> (Annual Income Expenses [50%])

Life expectancy is equivalent to two-thirds (2/3) of the difference between 80 years and the age of the victim at the time of his death,[57] which is 33 or is equivalent to 31.33 years.[58] Hence, following the formula, the compensation for loss of earning capacity amounts to P676,728.00.[59]

We find the award of fifty thousand pesos (P50,000.00) as death indemnity proper. However, we can not sustain the award of thirty thousand seven hundred pesos (P30,700.00), as actual damages. The Court can only grant such amount for expenses if proper receipts support them.[60] In People v. Uldarico Panado,[61] the Court held that the amount of fifty thousand pesos (P50,000.00) may be awarded to the heirs of the victim as moral damages without need of specific proof of moral suffering.[62]

WHEREFORE, the Court AFFIRMS with modification the decision of the Regional Trial Court, Branch 171, Valenzuela, Metro Manila, in Criminal Case No. 5002-V-95 finding accused-appellant ELROSWELL MANZANO y BREBONERA @ BOY ULO guilty beyond reasonable doubt of murder, and sentencing him to reclusion perpetua, and to pay the heirs of Ernesto Kasilag in the amounts of P676,728.00 for the loss of earning capacity, P50,000.00 as death indemnity, and P50,000.00 as moral damages.

With costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. 5002-V-95, decision dated March 31, 1999, Judge Adriano R. Osorio, Rollo, pp. 15-28.

[2] Regional Trial Court Records, p. 1; Rollo, p. 7.

[3] Regional Trial Court Records, p. 13.

[4] Ibid., p. 21.

[5] Identified as Dennis, Aries, Jake, Niño and Angel.

[6] TSN, July 30, 1996, p. 9.

[7] Ibid, pp. 10-11.

[8] Ibid, p. 12.

[9] Ibid., pp. 5-6.

[10] Ibid., pp. 13-14.

[11] Ibid., pp. 17-18.

[12] TSN, April 8, 1997, pp. 4-7.

[13] Ibid., pp. 7-8.

[14] TSN, September 10, 1997, p. 2. However, this list was not supported by any receipt.

[15] TSN, August 21, 1996, p. 12.

[16] Autopsy Report, Exhibit "D", Regional Trial Court Records, p. 156.

[17] TSN, September 28, 1998, p. 19.

[18] TSN, September 28, 1998, p. 28.

[19] Ibid., pp. 6-8.

[20] Ibid., p. 28.

[21] Ibid., p. 37.

[22] Ibid., p. 18.

[23] Ibid., pp. 9-11.

[24] Ibid., pp. 14-16. Records showed that Elroswell Manzano y Brebonera and Romeo Manzano are one and the same person.

[25] TSN, October 14, 1998, pp. 20-22.

[26] Ibid., pp. 4-6.

[27] Ibid., pp. 7-8.

[28] Rollo, pp. 15-28.

[29] People v. Navarro, G. R. Nos. 132696-97 , February 12, 2001; People v. de los Santos, G. R. No. 132123, November 23, 2000; People v. Bergonio, Jr., 340 SCRA 269, 283 [2000].

[30] Rollo, p. 29.

[31] Appellant's Brief, Rollo, pp. 39-51, at p. 41.

[32] People v. Olita, G. R. No. 140347, August 9, 2001, citing People v. Unarce, 337 Phil. 430 [1997]; People v. Patriarca, 319 SCRA 87, 97 [1999]; People v. Sagun, 363 Phil. 01 [1999]; People v. Villanueva, 362 Phil. 17 [1999].

[33] People v. Biñas, 320 SCRA 22, 56 [1999], citing People v. Verzosa, 355 Phil. 890 [1998].

[34] People v. Batidor, 362 Phil. 673, 683 [1999].

[35] People v. Paraiso, 319 SCRA 422, 435 [1999].

[36] People v. Benito, 363 Phil. 90, 99 [1999].

[37] People v. Fajardo, 315 SCRA 283, 291 [1999]; People v. De Leon, 319 SCRA 743, 752 [1999].

[38] Naval v. Panday, 321 SCRA 290, 301 [1999].

[39] People v. Hillado, 367 Phil. 29, 45 [1999]; People v. Bromo, 318 SCRA 760, 780 [1999].

[40] Appellant's Brief, Rollo, pp. 39-51, at p. 46.

[41] People v. Atrejenio, 369 Phil. 487, 503 [1999].

[42] Appellant's Brief, Rollo, pp. 39-51, at p. 49.

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[43] People v. Quisay, 320 SCRA 450, 471 [1999].

[44] People v. Almacin, 363 Phil. 18, 31 [1999].

[45] People v. Palma, 367 Phil. 736, 753 [1999]; People v. Geromo, 321 SCRA 355, 364-365 [1999].

[46] Appellant's Brief, Rollo, pp. 39-51, at p. 48.

[47] People v. Reyes, 369 Phil. 61, 75 [1999].

[48] People v. Yabut, 370 Phil. 612, 622 [1999]; People v. Tahop, 315 SCRA 465, 473 [1999].

[49] People v. Hamto, G. R. No. 128137, August 2, 2001, citing People v. Dinglasan, 334 Phil. 691, 708 [1997].

[50] People v. Mosquerra, G. R. No. 129209, August 9, 2001, citing People v. De Labajan, 317 SCRA 566, 575 [1999].

[51] People v. Bracero, G. R. No. 139529, July 31, 2001, citing People v. Yanson-Dumancus, 320 SCRA 584, 607 [1999].

[52] People v. Hamto, supra, Note 49, citing People v. Javier, 336 Phil. 177, 190 [1997].

[53] People v. Rada, 367 Phil. 466, 481 [1999], citing People v. Soldao, 312 Phil. 1049 [1995].

[54] People v. Perreras, G. R. No. 139622, July 31, 2001, citing People v. Bangcado, G. R. No. 132330, November 28, 2000.

[55] TSN, April 8, 1997, p. 8.

[56] People v. Tio, G. R. Nos. 132482-83, February 20, 2001.

[57] People v. Mendoza, G. R No. 134004, December 15, 2000.

[58] 2(80-33 years) = 31.33 years
3

[59] [31.33 years] x [(P150/day x 24 days x 12 months) - (P21,600)] = P676,728.00.

[60] People v. Maxion, G. R. No. 135145, July 19, 2001, citing People v. de la Cruz, G. R. No. 128362, January 16, 2001.

[61] G. R. No. 133439, December 26, 2000.

[62] People v. Sullano, 331 SCRA 649, 662 [2000].

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