

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. VIRGILIO BELAONG AND ROY BELAONG, ACCUSED, VIRGILIO BELAONG, ACCUSED-APPELLANT.

G.R. No. 138615. September 18, 2002

Ponente: CORONA., J.

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CORONA., J.:

Before us is an appeal from the decision[1] dated January 29, 1998 of the Regional Trial Court of Iloilo City, Branch 30, in Criminal Case No. 41461, finding appellant Virgilio Belaong and his co-accused, Roy Belaong, guilty of murder for the killing on June 1, 1993 of Catalina Tapales.

On August 31, 1993, Assistant Provincial Prosecutor Deana G. Peñaflorida filed with the Regional Trial Court of Iloilo City an Information[2] charging Virgilio and Roy Belaong, father and son respectively, with murder, allegedly committed as follows:

That on or about the 1st day of June 1993, in the Municipality of San Dionisio, Province of Iloilo, Philippines, and within the jurisdiction of this Court, this above-named accused, conspiring, confederating and helping one another, armed with a gun and a bladed weapon, with intent to kill, by means of treachery and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, wrestle, stab and bump the head of one CATALINA TAPALES to some stones, thereby hitting and inflicting injuries at her head and other vital parts of the body which caused her death thereafter.

Contrary to law.

When arraigned, both accused pleaded not guilty.[3]

The prosecution's version of the incident was based mainly on the testimonies of Razel Balayon,[4] Eduardo Arcede[5] and Rene Baradas[6] .

On June 1, 1993, around 12:00 o'clocknoon, prosecution witness Razel Balayon, together with Rolando Baldivino and Elmer Bayona, were walking along Baclayan Road on their way home to Brgy. Amayong when they saw their neighbor, Roy Belaong, in a fatigue jacket sitting on a rock by the roadside. Razel invited Roy to have lunch with them but the latter refused and told them to go ahead as he was still resting. The three of them continued walking and, after about fifty (50) meters more or less, met victim Catalina Tapales, a school teacher at Brgy. Amayong, conversing with Mrs. Amalia Espoli. Tapales asked the group if they were already enrolled and they answered in the negative before parting ways. Tapales walked towards Brgy. Canas along Baclayan Road.

The following morning, Razel heard the news that Tapales had been killed. She was investigated that very same day and thereafter she executed her affidavit.

At around 1:00 o'clock in the afternoon of June 1, 1993, prosecution witness Eduardo Arcede, a resident of Brgy. Canas, decided to go to the mountain to gather firewood. On his way, he saw the appellant Virgilio Belaong, banging the head of a woman against a rock about the size of two palms. He could not see the face of the woman,

as the latter's face was covered by the appellant and his son. Upon seeing him, the appellant immediately took the shotgun held by his son and pointed it at the prosecution witness. For fear of being shot, Eduardo turned back and went home to narrate the incident to his wife who prevented him from going out.[7] Eduardo went to sleep and woke up at around 8:00 o'clock in the evening to report the incident to Sgt. Marcelino Palma who in turn requested him to report the matter to Brgy. Capt. Leonardo Buga and Municipal Mayor Peter Lopez of San Dionisio, Iloilo. He did not reveal the names of the appellant and his son inasmuch as said appellant was a trusted man of Sgt. Palma.

At around 3:00 o'clock in the afternoon of the same day, Rene Baradas, who was on his way to the house of Mercy Allada, saw the accused Roy Belaong, who was a mere two arms' length away, running towards Brgy. Amayong. The accused asked him where the house of his Lola Leling was. Rene noticed that accused's fatigue jacket and hands were covered with blood. Upon reaching the house of Mercy Allada, Rene likewise saw the appellant Virgilio Belaong holding a .38 caliber revolver running towards Brgy. Amayong. Appellant was about three arms' length away from him. It was only the following day when he came to know of the death of Tapales. On June 3, 1993, he told Mayor Lopez what he saw.

Medico-legal findings showed that Mrs. Tapales died of massive and extensive meningeal hemorrhage due to traumatic skull fractures.

Isaac Tapales, father-in-law of the deceased, testified that due to the death of his daughter-in-law, he incurred burial expenses amounting to P26,000. Likewise the deceased's family lost unrealized income of P700,000. Isaac Tapales also testified that he was the one who spent for the funeral expenses of Catalina Tapales as his son, a former member of the Philippine Army, was already disabled and discharged from the service and the latter's pension was not sufficient to meet the expenses incurred.

On the other hand, the defense gave a different version of the incident. Accused Roy Belaong admitted that about noon of June 1, 1993, he was indeed walking along Baclayan Road in Brgy. Canas. Behind him was the victim Tapales who was also on her way to Brgy. Canas. Tired, he took a rest by the roadside. While resting, Tapales, who was conversing with Mrs. Espoli, passed by. Minutes later, he saw Razel Balayon, together with Rolando Baldivino and his cousin, Elmer Bayona, who invited him for lunch but he declined as their house was nearby. When the group left, a certain Bagatsing Esteban approached him from behind. Esteban pointed a gun at him and warned that he (Roy) would be killed if he told anybody of what he was about to witness. Bagatsing then allegedly followed Tapales and, accosting her, dragged her toward the thick bushes while pointing a gun at him (Roy). For fear of being killed, Roy did not tell his father as well as the police authorities what he saw. It was only on June 2, 1993 after his arrest when he narrated the incident to the police authorities.

Appellant Virgilio Belaong testified that at around 9:00 o'clock in the morning of June 1, 1993, he left for Barotac Nuevo to look for money to pay for the school expenses and the salaries of his farm workers. He arrived home in Brgy. Amayong, San Dionisio at around 3:00 o'clock in the afternoon and proceeded to his farm where he met his son, the accused Roy. He, together with his wife and son Roy left the farm at around 5:00 o'clock in the afternoon.

Cyrus Arcede, a detained prisoner and a nephew of prosecution witness Eduardo Arcede, testified that he was with his uncle Eduardo in gathering firewood near the scene of the crime in the afternoon of June 1, 1993. While they did not see the actual killing of Tapales, it was about 6:00 o'clock in the evening when they saw her dead body.

Wilfredo Posadas testified that there was no truth to Rene Barada's testimony that he met his niece, Mercy Allada, considering that at that time, Mercy was in Manila and it was only on June 6, 1993 that the latter returned

to San Dionisio. However, Mercy Allada was never presented in court despite three resettings.

On November 5, 1998, the trial court rendered a decision convicting appellant Virgilio Belaong and his co-accused son Roy Belaong of murder, the dispositive portion of which reads:

WHEREFORE, AND IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered finding both accused in the above-entitled case guilty beyond reasonable doubt as principals of the crime of Murder as the same is defined and penalized under Art. 248 of the Revised Penal Code, qualified by superior strength, sentencing accused Virgilio Belaong to suffer the penalty of RECLUSION PERPETUA and Roy Belaong to suffer an indeterminate penalty of EIGHT (8) YEARS OF PRISION MAYOR AS MINIMUM TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS OF RECLUSION TEMPORAL AS MAXIMUM, with all the accessory penalties provided for under the law and to pay the costs.

They are furthermore ordered to pay the heirs of the deceased jointly and severally the sum of FIFTY THOUSAND PESOS (P50,000.00) as indemnity for the death of the deceased; FIFTY THOUSAND PESOS (P50,000) for moral damages and TWENTY NINE THOUSAND PESOS (P29,000.00) for actual damages.

So ordered.

Both father and son filed notices of appeal.[8] However, on February 7, 2000, accused Roy filed a motion to withdraw his appeal on the ground that he was intending to apply for parole.[9] Said motion was approved per Resolution dated February 28, 2000.[10]

Appellant Virgilio Belaong raises the following errors in his brief:

I

THAT THE PROSECUTION HAVE (HAS) FAILED TO PROVE THE MOTIVE WHY ACCUSED AND HIS SON HAVE TO COMMIT THE ALLEGED CRIME OF MURDER ON THE PERSON OF MRS. CATALINA TAPALES.

II

THE TESTIMONIES OF THE ALLEGED EYEWITNESS EDUARDO ARCEDE, AND RENE BARRADAS ARE NOT RELIABLE AND TRUSTWORTHY.

We find the foregoing contentions to be completely without merit.

The appellant, in his defense, denies inflicting the injuries on Tapales that caused her death. He contends that the trial court erred in concluding that he and his son were positively identified, considering that the alleged eyewitness Eduardo Arcede failed to disclose the name of the perpetrators when he reported the incident to Sgt. Palma and Brgy. Capt. Buga. Besides, the said alleged eyewitness took more than twenty days before revealing the identities of the assailants in his sworn affidavit.

These arguments do not persuade us. As a general rule, any question on whether it is the prosecution or the defense that should be believed is best left to the trial court to decide. And once it decides, the trial court's opinion is generally viewed as correct and entitled to the highest respect. The trial court is invariably in a better position to resolve the question, having heard the witnesses personally, and observed their demeanor and deportment on the witness stand. We follow this rule unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[11]

In reviewing this case, we find that the trial court correctly gave full weight and credence to the testimonies of the prosecution witnesses. There is convincing evidence that Eduardo Arcede was present at the scene of the crime as

in fact he positively identified appellant Virgilio and his co-accused son as the culprits. He recognized appellant and his son because they were neighbors, he was just ten arms' length away from the locus criminis and the incident happened in his full view in broad daylight. Eduardo's narration revealed each and every detail of the incident in a clear, credible and straightforward manner, thus:

PROS. SALAO:

Q On June 1, 1993, do you remember where you ate your lunch?

A At home.

Q And after eating your lunch, what did you do?

A I went to the farm (bukid) to get some firewood.

Q Where is that farm of yours?

A Just adjacent to my house.

Q As you were going to your farm to get firewood, did you notice any unusual incident?

ATTY. VILLA

Objection, no basis, Your Honor.

COURT

When you said, "bukid", what do you mean, a mountain or a farm?

WITNESS:

A Mountain.

PROS. SALAO:

Q As you were going up to that mountain, did you pass by the road?

A Yes, ma'am.

Q What do you call that road?

COURT:

Make it simple.

PROS. SALAO:

Q When you went to that mountain, where did you pass?

A I passed at the road going up to the mountain.

Q As you were going up to that mountain, did you notice anything unusual that happened?

A I saw Virgilio Belaong holding the head of a woman and bumping it to the stone.

COURT:

What else happened?

A I just go and when he saw me, he got the shotgun from his son and pointed it to me.

PROS. SALAO:

Q You mentioned that he got the shotgun from his son, whom do you mean as his son?

A Roy Belaong.

Q You said, you went home, when you went home, did you tell anyone at home?

A My wife.

Q What did you do then when you told your wife?

A My wife did not allow me to go out of the house because she was afraid that they might do something to me.

Q After that, did you do anything else?

A No more, I just slept and I woke up 8:00 o'clock then I reported to Sgt. Palma.

COURT:

Q 8:00 o'clock in the evening?

A Yes, ma'am.[12]

Appellant harps on the eyewitness' failure to reveal the identities of the assailants to the authorities who investigated the incident that same night. Settled is the rule that non-disclosure of the identity of the assailant to the authorities immediately after the occurrence of a crime is not entirely outside normal human behavior. It is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case, as in fact the natural reticence of most people to get involved is of judicial notice.[13] There can be no standard or predictable behavior for a person who witnesses a shocking incident. One individual may immediately report the incident to the police while another, because of fear and/or desire to avoid getting involved in a criminal investigation against an immediate neighbor, may keep to himself what he has witnessed. Still others, like Eduardo, may come forward to reveal the identities of the perpetrators of the crime only after the lapse of a considerable length of time.[14] In the present case, Eduardo admitted that he failed to reveal the identities of the assailants the night he reported the incident because appellant was a trusted man of Sgt. Palma. Having in fact been threatened with a shotgun by appellant just a few hours earlier, the witness had every reason to fear for his life.

Eduardo's testimony was further strengthened by Rene Baradas' narration of events, particularly the fact that while walking near the crime scene at around 3:00 o'clock in the afternoon of June 1, 1993, he (Rene) met accused Roy Belaong who was running toward Brgy. Amayong and he noticed that the latter's hands and fatigue jacket were covered with blood. Subsequently, he saw Roy's father, the appellant Virgilio, also running and holding a gun. The pertinent portion of his testimony is hereunder quoted, thus:

PROS. SALAO:

Q On June 1, 1993 at about 3:00 o'clock in the afternoon, where were you?

A I was going to the house of Mercy Allada.

Q Where is that house of Mercy Allada?

A It is in Bangbang, Biaga, Batad.

Q How far is that Bangbang from Brgy. Canas?

A About two kilometers.

Q As you are walking towards Brgy. Bangbang, was there any untoward incident that happened?

A Yes, Ma'am.

Q Tell us what was that?

A I saw him running with blood on his hands and jacket and he asked me where is the house of his Lola Leling and I told him, it is there.

Q When you said him, whom are you referring to?

A Roy Belaong.

Q You mean Roy Belaong, the accused in this case?

A Yes, ma'am

Q You said that he had blood in his hands and he was running towards what direction?

A Towards Amayong.

Q How far was he from you when he asked you where the house of his Lola Leling was?

A About two arms' length.

Q And you saw clearly that he had blood in his hands?

A Yes, ma'am.

Q Why, what kind of jacket was he wearing?

A It was a fatigue jacket.

Q When you met him, was that along the main road or in the hill?

A It was in the mountain trail.

Q And then, after you have told him that the house of his Lola Leling was there, what did Roy Belaong do?

A He just ran.

Q And then after that, what happened?

A And after that, I just went to the house of Mercy Allada.

Q Did you meet anybody else?

A His father.

Q You meet (sic) Virgilio Belaong?

A Yes, ma'am.

Q What was Virgilio Belaong doing?

A He was running and was holding a weapon.

Q That weapon, what was that?

A Single .38.

Q Was he saying anything?

A No, ma'am.

Q Did you talk to the father of Roy Belaong when you met him?

A No, ma'am.

Q How far was the father of Roy Belaong from you?

A About three arms' length.

Q In what direction was the father of Roy Belaong running to?

A He was going towards Amayong.

Q How far was he from Roy Belaong?

A About one kilometer.

Q So, you mean to tell us that first you saw Roy Belaong and then you saw his father running in the same direction?

A Yes, ma'am.

Q And after that, where did you go?

A To Mercy Allada.

The physical evidence furthermore corroborates the material points of Eduardo Arcede's testimony. Medical findings show that Mrs. Tapaes died of massive and extensive meningeal hemorrhage due to traumatic skull fractures. The autopsy report of Dr. Ricardo Jaboneta reveals the following injuries inflicted on the victim: two abrasions, three contusions, one contuse abrasion, one hematoma, five lacerated wounds and skull fracture. Dr. Jaboneta also testified that the injuries inflicted might have been caused by a rock or any rough object but not a sharp instrument and that there was more than one assailant because of the number of wounds inflicted. [15]

As to appellant's argument that he should be acquitted because Eduardo Arcede recanted his testimony that he (Eduardo) saw him (Virgilio) banging the head of a woman against a rock, this Court finds the same untenable. Witness Arcede testified that he left the Witness Protection, Security and Benefit Program not to change his testimony but to undergo medical treatment.[16]

Moreover, there is no evidence to prove that the prosecution witnesses were motivated by any ill-motive in implicating the appellant in the commission of the crime. When there is no showing of any improper motive on the part of the prosecution witnesses to testify against an accused or to falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.[17]

On the other hand, appellant's and his son's defenses of denial and alibi do not inspire belief. The Court has consistently ruled that the defense of bare denial by an accused and his witnesses must yield to his positive identification as the culprit. The defense of alibi is worthless in the light of positive testimony identifying the accused and placing him at the scene of the crime. Alibi is always viewed with suspicion and caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.[18] As between positive and categorical testimony that has the ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.[19] In the case at bar, appellant Virgilio and his son Roy were not only positively

identified by the prosecution witnesses but accused Roy also admitted that he was in the immediate vicinity at the time of the commission of the crime.

The defense presented Cyrus Arcede as a witness but we find his testimony doubtful. He never executed any statement while the case was still under investigation. He volunteered as a witness only when he was detained at the Iloilo Rehabilitation Center where appellant was also a detainee. He admitted that appellant was his friend and that he often met appellant's wife when the latter visited her husband in jail. In sum, appellant's and co-accused's defense of denial cannot be believed in the face of strong affirmative evidence of their presence at the scene of the crime.

Having established the guilt of appellant beyond reasonable doubt, we shall now discuss the qualifying circumstance attending the crime.

We sustain the trial court in considering the qualifying circumstance of abuse of superior strength in killing the victim. To take advantage of superior strength is to purposely use excessive force out of proportion to the means of defense available to the person attacked.[20] In the case at bar, there was a clear and gross disparity of strength between the unarmed female victim who was alone and the two male aggressors armed with a firearm. The victim gave no provocation and was in fact merely walking when she was attacked. The evidence also shows that, while appellant was banging the head of the victim who was completely defenseless, his co-accused son was standing in front of them holding a gun. In *People vs. Mariano*,[21] this Court stated that:

We also find that the circumstance of abuse of superior strength aggravated the killing of the victim. There was gross physical disparity between the age, built and strength of accused-appellant Ruth Mariano viz-a-viz the victim Michelle. The former is a big and burly matured woman in her thirties, several inches taller than the victim, and "who could subdue her [victim] even without a weapon." While the latter was merely a teenager, five (5) feet tall, slim and poorly nourished and weighed less than 100 pounds according to Dr. Aranas. The records also show that accused-appellant Ruth Mariano pulled the victim's hair, banged her head, and repeatedly doused boiling water on her. On those occasions, the victim was not shown to be equipped with reasonable means of defense. Abuse of superior strength depends upon the age, size and strength of the parties. To take advantage of superior strength is to purposely use excessive force out of proportion to the means of defense available to the person attacked.

In *People vs. Punzalan*,[22] we likewise held that:

Abuse of superior strength was similarly correctly appreciated. There was great variance in the relative physical condition of the assailants and of the victim: two adult males as against an old lady suffering from hypertension; the assailants were armed with bladed and blunt instruments while the victim was alone and unarmed and in no position to defend herself; and the great violence inflicted upon the victim, as indicated by the number and location of her wounds, all indicate the presence of the circumstance of abuse of superior strength.

Considering that the murder was committed prior to the effectivity of RA 7659 (the heinous crimes law) on 1 January 1994, the applicable provision is Art. 248 of the Revised Penal Code which penalizes murder with reclusion temporal in its maximum period to death. The imposable penalty which has three periods, namely, minimum (reclusion temporal), medium (reclusion perpetua) and maximum (death), makes Art. 64 of the Revised Penal Code applicable. In this case the prosecution was able to establish the qualifying aggravating circumstance of abuse of superior strength. In the absence of any other generic aggravating and mitigating circumstance, the imposable penalty is reclusion perpetua, the medium period of the penalty under Art. 64 of the Penal Code.

Now for the civil liability of appellant. The trial court ordered appellant and his co-accused to pay the heirs of the deceased jointly and severally the sum of P50,000 as civil indemnity, P50,000 as moral damages and P29,000 as

actual damages. Moral damages may be awarded if there is proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[23] Nothing in the records shows that the father-in-law of the deceased asked for moral damages. Since moral damages were not prayed for and no evidence to substantiate the award was presented, moral damages cannot be awarded. Nonetheless, the heirs of the victim are entitled to civil indemnity in the amount of P50,000, pursuant to prevailing jurisprudence.[24]

Regarding actual damages, the expenses listed by the victim's father-in-law amounted to P26,900 but of this amount only P15,900 was supported by receipts. Art. 2199 of the Civil Code provides that a party may recover actual or compensatory damages only for such loss as he has duly proved. Therefore, the award of actual damages should be reduced to P15,900.

The trial court also failed to rule on the damages for the loss of earning capacity of the deceased Catalina Tapales. The absence of documentary evidence to support such claim does not preclude its recovery.[25] The testimony of the victim's father-in-law, Isaac Tapales, on the earning capacity of his daughter-in-law who was a teacher sufficiently cures this deficiency. Catalina Tapales was thirty-two (32) years old at the time of her death. Her average income as a teacher was P3,102 a month. In accordance with the American Expectancy Table of Mortality adopted in several cases[26] decided by this Court, the loss of her earning capacity should be calculated as follows:

Net earning = life expectancy x Gross — living

capacity (x) income expenses

(50% of gross

annual income)

or

$x = 2(80-32) \times [37,224 - 18,612]$

$3 \ 32 \times 18,612$

$x =$

$=$

P595,584

WHEREFORE, premises considered, the judgment of the Regional Trial Court of Iloilo City, Branch 30, in Criminal Case No. 41461 dated January 29, 1998 imposing the penalty of reclusion perpetua and ordering appellant Virgilio Belaong to pay the amount of P50,000 as civil indemnity is hereby **AFFIRMED** with the **MODIFICATION** that appellant and accused are likewise ordered jointly and severally to indemnify the heirs of the deceased Catalina Tapales for loss of earning capacity in the amount of P595,584. However, the award of moral damages is disallowed while the award of actual damages is reduced to P15,900. Costs against appellant.

SO ORDERED.

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

[1] Penned by Judge Adriano S. Savillo, Rollo, pp. 33-40.

- [2] Original Records, p. 1.
- [3] Id., p. 69.
- [4] TSN, January 20, 1994.
- [5] TSN, December 6, 1994.
- [6] TSN, October 20, 1994.
- [7] TSN, December 6, 1994, pp. 4-5.
- [8] Rollo, pp. 41-42.
- [9] As of 16 February 2000, he had already served more than six (6) years of his sentence of eight (8) years of prison mayor to fourteen (14) years and eight (8) months of reclusion temporal.
- [10] Rollo, p. 57.
- [11] People vs. De Leon, 350 SCRA 11, 19 [2001] .
- [12] TSN, December 6, 1994, pp. 3-5.
- [13] People vs. Rubio, 257 SCRA 528, 534 [1996] .
- [14] People vs. Taclan, 308 SCRA 368, 381-382 [1999] .
- [15] TSN, December 21, 1993, pp. 11-13.
- [16] TSN, December 6, 1994, pp. 10-11.
- [17] People vs. Gallego, 338 SCRA 21, 38 [2000] .
- [18] People vs. Castillo, 273 SCRA 22, 32-33 [1997] , citing People vs. Balsacao, 241 SCRA 309, 315 [1995] , People vs. Pano, et al. 257 SCRA 274, 282 [1996] and People vs. Mendoza, et al., 223 SCRA 108, 115[1993] .
- [19] People vs. Larena, 309 SCRA 305, 317 [1999] .
- [20] People vs. Bautista, 331 SCRA 170, 188 [2000] ; People vs. Abordo, 321 SCRA 23, 41 [1999] .

[21] 347 SCRA 109, 125 [2000] .

- [22] People vs. Punzalan, 203 SCRA 364, 381 [1991] .
- [23] People vs. Oliano, 287 SCRA 158, 180 [1998] .
- [24] People vs. Bonito, 342 SCRA 405, 427-428 [2000] .
- [25] People vs. dela Cruz, December 6, 2000; People vs. Verde, 302 SCRA 690 [1999] .
- [26] People vs. Librando, 335 SCRA 232, 247-248 [2000] ; People vs. Arellano, 334 SCRA 775, 792-793 [2000] .

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