

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILBERT CABAREÑO, APPELLANT.

*G.R. No. 138645. January 16, 2001*

Ponente: PANGANIBAN, J.

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### PANGANIBAN, J.:

Treachery is appreciated when it is shown that an assailant deliberately and consciously adopted a means of attack without risk to himself. In the present case, it was not shown that the attack had been deliberately adopted, or that it had entailed no risk to appellant.

#### The Case

Wilbert Cabareño appeals the November 23, 1998 "Judgment"[1] of the Regional Trial Court (RTC) of Iloilo City in Criminal Case No. 48852, finding him guilty beyond reasonable doubt of murder and sentencing him to reclusion perpetua.

In an Information dated January 20, 1998, Second Assistant Provincial Prosecutor Portia T. Cabalum charged appellant as follows:

"That on or about the 13th day of December, 1997, in the Municipality of Lambunao, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm, with deliberate intent and decided purpose to kill and by means of treachery, did then and there wilfully, unlawfully and feloniously shoot Nerio Casaquite with the firearm which the accused was then provided, hitting the victim on the back portion of his body which caused his death."[2]

Upon his arraignment on February 27, 1998,[3] appellant, assisted by Atty. Manuel Casumpang, pleaded not guilty. After trial in due course, the court a quo rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, there being sufficient and satisfactory proof shown to establish the guilt of the accused, Wilbert Cabareño alias "Bebot", beyond reasonable doubt of the crime of murder with which he stands charged, he is therefore hereby sentenced to suffer the penalty of reclusion perpetua with such accessory penalties as provided in Article 41 of the Revised Penal Code and, moreover, to indemnify the family of the victim [in] the amount of P50,000.00 as well as reimburse the family [in] the amount of P89,000.00 for the expenses [for] the wake and burial of the victim, and [to] pay the cost."[4]

#### The Facts

##### Version of the Prosecution

In its Brief,[5] the Office of the Solicitor General presents the following narration of facts:

"December 13, 1997, [was] the barangay fiesta of Jayobo, Lambunao, Iloilo (TSN, April 24, 1998, p. 4). At around 9:00 [o]n the evening of the same day of festivities, a disco was going on near the house of Barangay Chairman Aurelio Catedrilla (Ibid., pp. 5-6). Suddenly, there was a commotion near the store that was located a few arm's length away from the venue of the disco (Ibid., p. 7). It involved a certain Pestilo and the younger brother of a certain Manolo (Ibid., pp. 8-9). The younger brother of Manolo splashed beer on Pestilo (Ibid., p.

9). Then, Aurelio Catedrilla went to the place where the trouble was to pacify them (Ibid., pp. 9-10). He was followed by Nerio Casaquite (Ibid.). When Aurelio Catedrilla reached the place, Wilbert Cabareño, alias Bebot, shot him at the back with a 10 inch long firearm (Ibid., pp. 10 and 12). However, instead of the bullet hitting Aurelio Catedrilla, it hit the back of Nerio Casaquite (Ibid., p. 12). Wilbert Cabareño was about two arm's length away from them when he pulled the trigger (Ibid., p. 11).

"Nerio Casaquite fell to the ground, while Wilbert Cabareño fled from the scene (Ibid., p. 13). The barangay tanod came to Nerio Casaquite's aid and brought him to the hospital (Ibid.).

"However, Nerio Casaquite later succumbed to the gunshot wound he sustained (Ibid., pp. 23-25)."[6]

## Version of the Defense

Denying the charge against him, appellant narrates the facts in the following manner:[7]

"On December 12 and 13, 1997, Barangay Jayobo, Lambunao, Iloilo, was celebrating its Barangay Fiesta. As additional come ons to liven the celebration, a disco dance was held every night from December 12 to 13, 1997 near the house of the incumbent [b]arangay [c]aptain, Aurelio Catedrilla.

On December 13, 1997 at about 9:00 o'clock in the evening, while the disco dance was in progress, a certain Tayok Estiba and Pablo Sanchez were having a drinking spree at the nearby store about two (2) armslength [sic] from the "discohan", probably as a sign of having reconciled after their quarrel the night before December 12, 1997, which was successfully pacified by Nerio Casaquite and Barangay Captain Aurelio Catedrilla. At that particular time, accused-appellant while passing by the store towards the "discohan" was invited by Pablo Sanchez and Tayok Estiba and [he] obliged himself to join in their drinking spree. Thereafter, Pablo Sanchez and Tayok Estiba being drunk again quarreled with each other. As before, Nerio Casaquite came to pacify them[;] however, this time, the protagonists would not listen to him. Consequently, he requested the [b]arangay [t]anod present to fetch the [b]arangay [c]aptain, Aurelio Catedrilla to help him in pacifying the quarelling Pablo Sanchez and Tayok Estiba. A few minutes later, Barangay Captain Aurelio Catedrilla arrived with his tanods and a military man. Immediately, the said military man hit Tayok Estiba with the butt of his armalite rifle, forcing Barangay Captain Aurelio Catedrilla to admonish him not to hurt Tayok Estiba being his grand nephew. In obedience, the said military man now turned his ire against Pablo Sanchez. To prevent the latter from being further hurt by the military man, Nerio Casaquite now ushered Pablo Sanchez out of the store and persuaded him to go home.

Meanwhile, Tayok Estiba, not yet fully assua[ged] of his anger against Pablo Sanchez, was seen grappling with his uncle, Barangay Captain Aurelio Catedrilla, for possession and control of a 12 gauge shot gun inside the store and in the presence of accused-appellant. While thus in that situation, the gun accidentally fired[,] hitting Nerio Casaquite at his back causing his death. Afterwards Barangay Captain Aurelio Catedrilla told his grand nephew, Tayok Estiba, to leave the place. When he finally left the scene of the accident, accused-appellant followed and also went home.

The next morning, Barangay Captain Aurelio Catedrilla was arrested at his house as the primary suspect in the shooting and killing of Nerio Casaquite on the night of December 13, 1997. Despite the said arrest of Barangay Captain Aurelio Catedrilla being duly witnessed by his cousin, guest Absalon Lego, however, the latter never told the arresting police authorities that it was accused-appellant who actually shot Nerio Casaquite. It was only 3 days later, and while Barangay Captain Aurelio was already jailed, when Absalon Lego, who was fetched from his house by the younger brother of the Barangay Captain, conveniently executed a sworn statement inculcating accused-appellant as the one who really shot Nerio Casaquite on the night of December 13, 1997. As a result, accused-appellant, Wilbert Cabareño was arrested on December 19, 1997. Despite his protestation, however, the arresting police dismissed his claim of innocence, without even giving him the benefit of the doubt, in fairness and in the interest of law and justice [which] the police were sworn to uphold and protect."

### Ruling of the Trial Court

In its Decision, the trial court found the testimony of the prosecution witness, Absalon Lego, to be "positive and straightforward, hence persuasive and credible." [8] Lego, who personally knew appellant, positively identified him as the shooter. Moreover, the witness had a good view of the incident because he was only a few meters away from the locus criminis, which was well-lighted at the time.

The trial court also rejected appellant's claim that Tayok Estiva was the killer. It held that this defense was improbable because the person in front of Estiva was Aurelio Catedrilla, not the deceased. It also ruled that the killing was qualified by treachery.

Hence, this appeal. [9]

### Issues

In his Brief, appellant cites the following alleged errors:

#### "I

The lower court erred in finding the defense of accused-appellant that it was Tayok Estiva who fired the gun that hit Nerio Casaquite, highly improbable.

#### "II

The lower court likewise erred in finding the uncorroborated testimony of prosecution witness, Absalon Lego, sufficient to prove the guilt of the accused-appellant beyond reasonable doubt." [10]

In the main, appellant questions the credibility of the prosecution eyewitness. The Court, in addition, will also determine the character of the crime and the presence of treachery as a qualifying circumstance.

### The Court's Ruling

The appeal is partly meritorious. Appellant should be convicted of homicide, not murder.

### Main Issue:

#### Credibility of Lone Eyewitness

The defense assails the credibility of the lone prosecution witness, Absalom Lego, claiming that he was outside the store where the incident occurred. Moreover, his attention was focused on the nearby disco, not on the store, thus rendering his account highly improbable. Moreover, when he saw the police arrest Catedrilla, the former did not readily point to appellant as the malefactor. It was only three days later that he came forward, stating that he had seen what happened and that appellant had fired the fatal shot.

Time and again, this Court has ruled that the evaluation of the credibility of witnesses is a matter that particularly falls within the authority of the trial court, as it had the opportunity to observe the demeanor of the witnesses on the stand. For this reason, appellate courts accord its factual findings and assessments of witnesses with great weight and even finality, barring arbitrariness or oversight of some fact or circumstance of weight and substance. [11]

In this case, the trial court, which had the opportunity to hear and examine the testimony of the lone prosecution eyewitness, was convinced of his credibility. Eyewitness Lego narrated that he was only a few meters away from the incident and positively stated that it was appellant who had fired the shot that killed the victim:

"Q Where [was] this Aurelio going followed by Nerio Casaquite?

A He was intending to pacify the trouble.

Q Was he able to go where the trouble was?

A Yes, sir.

Q And when he reached the place what did Aurelio Catedrilla do?

A He was shot by Bebot.

Q When you said Bebot are you referring to the accused in this case Wilbert Cabareño?

A Yes, sir.

x x x x x x x x

Q When Bebot shot Aurelio who was hit?

A Nong Nerio Casaquite was hit.

Q And what was Nerio Casaquite doing when he was hit?

A He had his back towards the accused also.

COURT:

Q How many times did the accused shoot Aurelio?

A One time.

Q What kind of weapon did he use?

A A 12 gauge gun.

Q How long [was] that gun which he used in shooting Nerio?

A Like this.

x x x x x x x x

COURT:

Q So, there was no exchange of words between Nerio and the accused when the gun was fired?

A No, there was none.

Q And what happened to Nerio when you said he was shot?

A He fell to the ground.

Q Right there at the place where he was shot?

A He was about to walk back first before he fell to the ground.

Q How far [was] that place where he fell [from] the place where he was shot?

A About one (1) arm's length."

x x x x x x x x

PROS. GEDUSPAN:

Q How about Wilbert Cabareño alias Bebot, what did he do after he shot Aurelio?

A He fled.

Q And what happened to Nerio Casaquite after he fell down?

A The Barangay Tanods came to Nerio's aid.

Q Where did they bring Nerio Casaquite?

A To the hospital.

Q How about you, what did you do?

A I also fled."[12]

Moreover, Lego had a clear view of the incident, which happened in a sufficiently illuminated area.

"Q So, the place where the trouble ensued was two (2) armslength [sic] away from you?

A Yes, sir.

Q Was that place near the store or near the dance hall?

A It was near the store and near the disco place.

Q What about the place where the commotion took place, was that lighted?

A Lighted.

Q What kind of light?

A It was lighted by an electric bulb.

Q Where was that bulb placed in relation to the store?

A It was inside the store."

Indeed, appellant has given us no sufficient reason to overturn the factual findings of the trial court. Futile is his claim that Lego, whose attention ought to have been focused on the disco instead, could not have witnessed the shooting incident. First, Lego had a clear view of the store because it was only a few meters away and was open on three sides, having only one wall at the back. Second, it was natural for him to look in that direction, because of the commotion that had occurred prior to the actual shooting and the arrival of Catedrilla with three companions, one of whom had a long firearm. In fact, Lego's attention would have been focused on the store, because Catedrilla even hit one Pablo Sanchez with the butt of a firearm.

That Lego reported to the authorities what he had seen only after a delay of three days is of no moment. In *People v. Lapay*,<sup>[13]</sup> this Court ruled that a witness' non-disclosure to police authorities of appellant's identity immediately after the occurrence of a crime is not entirely against human experience. Delay in revealing the names of malefactors does not, by itself, impair the credibility of prosecution witnesses and their testimonies.<sup>[14]</sup> In this case, Lego readily admitted that he was afraid to report to the authorities. His failure to specify the object of his fear<sup>[15]</sup> did not make his testimony less credible.

#### Estiva Not the Shooter

Appellant further claims that it was Estiva who shot the victim and that the RTC erred in rejecting this claim. Allegedly, the trial court merely stated that said defense was highly improbable because it was not the victim who should have been hit. Rather, it should have been Catedrilla, being directly in front of Estiva who was allegedly grappling for possession of the gun at the time.

It must be pointed out that the conviction of appellant was based primarily on the testimony of Prosecution Witness Lego, who had positively identified the former. The trial court, which had the opportunity to observe the manner and demeanor of all the witnesses, gave credence to Lego's testimony and rejected appellant's claim. Its ruling on this point is clear and unassailable.

#### Crime and Punishment

Paragraph 1, Article 4 of the Revised Penal Code, provides:

"Art. 4. Criminal Liability. --- Criminal liability shall be incurred:

- By any person committing a felony although the wrongful act done be different from that which he intended."

In the present case, appellant is responsible for the death of Nerio Casaquite, even if the former's intended target when he fired the gun was supposedly Catedrillo. Criminal liability is incurred by any person committing a felony, although the actual victim be different from the one intended.[16] As held in *US v. Diana*[17] decided by the Court as early as 1915, "[t]he same crime would have been committed if the injured man and the deceased had been Dionisio Legara, instead of the defendant's nephew, x x x; the crime of homicide would have been committed just the same and one man would have been deprived of his life by the criminal act of another."

#### Treachery

The trial court ruled that the killing was qualified by treachery.[18] It failed to explain, however, the basis of said ruling. Indeed, the proven facts do not adequately establish the presence of this qualifying circumstance.

Treachery is present when the means, method or form of execution gives the person attacked no opportunity for self-defense or retaliation. It must be proven that such means, method or form of execution is deliberately and consciously adopted without danger to the accused.[19]

In this case, the prosecution proved that appellant fired at the back of the victim. It was not able to show, however, that appellant had deliberately adopted the attack, considering that it was executed during a commotion and as a result of it. Moreover, it could not be said that the attack was without risk to himself, because the victim was then in the company of three other persons, all of whom were alert and one was even armed. Indeed, the Court has held thus:[20]

"x x x. The qualifying circumstance of treachery can not logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. This circumstance can only be applied, according to the tenor of Article 13, Sub-section 16 of the Revised Penal Code, when the culprit employs means, methods or forms of execution which tend directly and specially to insure the commission of the crime and at the same time to eliminate or diminish the risk to his own person from a defense which the other party might offer. In *United States vs. Namit*, 38 Phil. 926, it was held that the circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of *alevosia* necessary to raise a homicide to murder, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself."

Well-settled is the rule that a qualifying circumstance must be established as clearly as the elements of a crime.[21] In this case, treachery was not proven beyond reasonable doubt. Absent any other qualifying circumstance, appellant should therefore be convicted only of homicide,[22] not murder.

#### Civil Liability

We affirm the award of P50,000.00 as indemnity *ex delicto*, which is granted without need of proof other than the

commission of a crime.[23] Likewise, the trial court correctly awarded the sum of P89,000 as actual damages, which we find to be supported by evidence.

WHEREFORE, the appealed Decision is hereby MODIFIED. Appellant is CONVICTED of homicide and SENTENCED to an indeterminate penalty of eight years and one day of prision mayor, as minimum, to fourteen years, eight months and one day of reclusion temporal as maximum. The award of civil indemnities is AFFIRMED. No costs.

**SO ORDERED.**

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Written by Judge Bartolome M. Fanuñal.

[2] Information, p. 1; records, p. 2; rollo, p. 7.

[3] See Certificate of Arraignment; records, p. 18-A.

[4] Assailed Decision, p. 6; rollo, p. 17; records, p. 72.

[5] Appellee's Brief was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Karl B. Miranda and Sol. Roland C. Villaluz.

[6] Appellee's Brief, pp. 2-3; rollo, pp. 73-74.

[7] Appellant's Brief, pp. 3-6; rollo, pp. 36-39. This was signed by Attys. Arceli A. Rubin, Teresita S. de Guzman and Nestor M. Hermida, all from the Public Attorney's Office.

[8] Assailed Decision, p. 5; rollo, p. 55.

[9] This case was deemed submitted for resolution on November 24, 2000, upon receipt by this Court of the Urgent Manifestation in Lieu of Reply Brief filed by appellant's counsel, waiving the filing of a reply brief.

[10] Appellant's Brief, p. 1; rollo, p. 34. Upper case used in the original.

[11] *People v. Perucho*, 305 SCRA 770, 778, April 14, 1999; *Cosep v. People*, 290 SCRA 378, May 21, 1998; *People v. Meneses*, 288 SCRA 95, March 26, 1998; *People v. Lagao*, 286 SCRA 610, February 27, 1998; *People v. Gil*, 284 SCRA 563, January 22, 1998.

[12] TSN, April 24, 1998, pp. 7-13.

[13] 298 SCRA 62, 78, October 14, 1998.

[14] See also *People v. Castillo*, 261 SCRA 493, September 6, 1996; *People v. Rosario*, 246 SCRA 658, July 18, 1995; *People v. Lacatan*, 295 SCRA 203, September 7, 1998; *People v. Pelen*, 313 SCRA 683, September 3, 1999.

[15] Refuting the assertion of the witness that he was afraid, appellant contends: "Of whom, to whom and why, he did not elaborate, making his excuse subject to real doubt and apprehension from an impartial mind." Appellant's Brief, p. 12; rollo, p. 45.

[16] *People v. Flora et al.*, GR No. 125909, June 23, 2000.

[17] 32 Phil. 344, 348, November 29, 1915, per Torres, J.

[18] RTC Decision, p. 6; rollo, p. 17.

[19] *People v. Castillo*, GR No. 120282, April 20, 1998. See also *People v. Pallarco*, GR No. 119971, March 26, 1998; *People v. Molina*, GR Nos. 115835-36, July 22, 1998; *People v. Sabalones*, GR No. 123485, August 31, 1998; *People v. Cawaling*, GR No. 117970, July 28, 1998; and *People v. Sumalpong*, 284 SCRA 464, January 20, 1998.

[20] *People v. Domingo Albao*, GR No. 125332, March 2, 2000, per Gonzaga-Reyes, J.

[21] See *People v. Gerry Nalangan*, GR No. 117218, March 20, 1997.

[22] Article 249 of the Revised Penal Code provides that "[a]ny person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal."

[23] See *People v. Nilo Bautista et al.*, GR No. 131840, April 27, 2000; *People v. Albao*, 287 SCRA 129, March 6, 1998.

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