

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON BULFANGO Y PEÑAFIEL ALIAS JUDDIE, ALIAS FREDDIE BULFANGO Y PEÑAFIEL, ALIAS MARLON NAVARRO, ACCUSED-APPELLANT.

G.R. No. 138647. September 27, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Marlon Bulfango y Peñafiel alias Juddie, alias Freddie Bulfango y Peñafiel, alias Marlon Navarro, together with a certain Mario Doe, was charged with murder in an information which reads:

That on or about 6:30 o'clock in the evening, more or less, of April 6, 1997, at Osmeña Street, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bladed weapon, which they were then conveniently provided, with treachery, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault, and stab one Joemari A. Bedua, hitting the latter's chest, thereby inflicting mortal wounds on the latter which were the direct and immediate cause of his death.

Contrary to and in Violation of Article 248 of the Revised Penal Code in relation to R.A. 7659.[1]

The case was docketed as Criminal Case No. 97-1240 and raffled to Branch 19 of the Regional Trial Court of Cagayan de Oro City.

On arraignment, accused-appellant pleaded "not guilty". Trial on the merits then ensued.

Helenia Pagapulaan testified that at 3:30 in the afternoon of April 6, 1997, the victim, Joemari Bedua, and accused-appellant figured in a heated argument at the bleachers of the Gold City Coliseum located along Osmeña Street in Cagayan de Oro City. Joemari was in front of Helenia while accused-appellant was closely seated at Helenia's right side.

At around 6:30 that evening, right after leaving the Gold City Coliseum and while waiting for a "motorela" along Osmeña Street, Helenia saw accused-appellant throw a stone at Joemari, who was then crossing the road. Joemari was hit at the back. Just then, another person whom she failed to recognize threw a stone at Joemari, which hit him at the back of his head and caused him to fall down on the pavement. Accused-appellant then pulled a knife and stabbed Joemari once on the chest. Petrified by what she saw, Helenia immediately fled from the crime scene.

Dr. Tammy Uy, the medico-legal officer of the National Bureau of Investigation in Cagayan de Oro City, certified that the cause of Joemari's death was hemorrhage, severe, secondary to stab wound on the chest which was directed "backward, upward, slightly medially . . . piercing the pericardium and right ventricle of the heart with an approximate depth of 9.5 cm." [2]

Accused-appellant interposed the defense of denial and alibi. He averred that on April 6, 1997, he was in front of the basketball court of Cugman, Cagayan de Oro City where he acted as "banker" in the cara y cruz game. His co-players were a certain Bingbing, his compadre and a certain Edwin. He admitted using the aliases Judy,

Marlon Navarro and Sagal but denied using the alias Freddie, which is the name of his elder brother. Roberta Bebura corroborated accused-appellant's alibi.

The trial court gave credence to the prosecution's evidence, convicted accused-appellant of murder and rendered judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered by this court sentencing accused to the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the sum of P50,000.00, to pay said heirs actual damages in the sum of P40,500.00, and moral damages in the sum of P50,000.00. He is also ordered to pay the costs of this case.

Accused's custodian is hereby ordered to ship him as soon as possible to the proper higher authorities.[3]

From the aforesaid decision, accused-appellant interposed the present appeal, alleging that the trial court erred:

1. In convicting the accused based on the conflicting and incredible testimony of the prosecution witnesses;
2. In appreciating treachery as present during the commission of the crime; and
3. In convicting the accused despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant decries the perceived "extreme partiality"[4] of the trial court as shown by the following statement in the assailed decision, to wit:

Marlon Bulfango has been born a loser. He practically grew up as a crooked boy, and later a crooked man, by his own testimony. After minor offenses, he now is graduating or graduated to heinous crime. For this he must pay society.[5]

Indeed, the trial court may have made unnecessary statements but they were, nevertheless, not without any basis. The records show that accused-appellant himself admitted having been thrice convicted of theft, had several pending cases ranging from grave oral defamation to carnapping, not to mention the present murder case.[6] Accused-appellant's imputation of "extreme partiality" on the part of the trial court is clearly unfounded. Verily, the statements were made after full-blown trial, long after the court had reached a conclusion with regard to accused-appellant's guilt. From a reading of the records and the transcripts of stenographic notes, this Court finds no indication of bias on the part of the trial court, and accused-appellant has failed to show any other instance save for the above-quoted statements.

In any event, we find that the trial court was correct in disregarding accused-appellant's defense of denial and alibi. Denial is an inherently weak defense vis-à-vis the positive and categorical assertion of prosecution witnesses.[7] Between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of accused-appellant, on the other hand, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. It is 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.[8]

Moreover, for alibi to prevail, 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 the commission, and not merely that he was somewhere else.[9] Accused-appellant miserably failed in this regard. As correctly found by the trial court:

Accused's alibi is rendered the weaker because his alleged place of residence, as well as Gold City Coliseum which is a cockpit, located at Sergio Osmeña St. in Cagayan de Oro City are only 7 kilometers from the

basketball court in Cugman where accused allegedly played cara y cruz (Id., 14). Moreover, the mentioned places are linked by criss-crossing concrete streets which are plied by the smallest vehicle to heavy trucks. And April 6, 1997, being a Sunday, it could be presumed that there was no traffic jam.

Also, accused-appellant assails his conviction based on the alleged conflicting and incredible testimony of Helenia. In particular, accused-appellant argues that despite Helenia's admission that Joemari was once her caretaker in her ricefield, she failed to identify Joemari as the one involved in the verbal tussle inside the coliseum. However, the Solicitor General correctly observed:

On this score, suffice it to state that it is very possible for the victim to have really worked as one of the caretakers of Helenia's ricefield, and the latter may have only known him by face and not necessarily by his name. This happens when there are several workers and the employer's memory is not retentive enough to remember the name of each and every employee working for him. At any rate, whether or not Helenia knew the name of the victim prior to the incident does not alter the fact that she did witness the incident and saw how appellant stabbed the victim to death.[10]

Accused-appellant cites another inconsistency wherein Helenia, in her direct examination, explained that she went to the coliseum to watch the cockfight and to be with her husband so she can buy their provisions.

However, during cross-examination, she testified that she was just accompanying her sons and that she wanted to see their remaining cocks fight. Thus:

Q. Now, you said that your husband was a gaffer. When was that when your husband died?

A. March 7, 1998.

Q. You went to the coliseum because you were accompanying your husband who was a gaffer?

A. Yes.

Q. At that time when the incident happened, your husband was still alive or deceased?

A. Already dead.

Q. Can you tell us what year when this incident allegedly happened?

A. April 6, 1997.

Q. And did I get you right that your husband died on March 8, 1998?

A. March 8, 1997.

Q. So, it is not 1998?

A. Yes, Sir.

Q. So, since your husband died on March 8, 1997, the incident happened one month after?

A. Yes.

Q. So, one month after your husband died, you were still going to coliseum?

A. It just happened that I went to coliseum because we wanted his remaining cocks to fight.

Q. I thought that you were just accompanying your husband because you buy your needs?

A. Yes, because he usually stay very late in the afternoon because if there is a friend of him who wanted to have a gaff of his fighting cock, he will do it.

Q. My question is, you only went with your husband to coliseum because you will buy your needs for your home?

A. Yes.[11] (*Italics supplied*)

Apparently, when Helenia was answering the questions propounded during cross-examination, she was referring to what she was doing at the coliseum after the death of her husband. On the other hand, the defense counsel was trying to clarify Helenia's and her husband's usual routine in going to the cockpit, obviously when Helenia's husband was still alive. If at all, this is only a case of simple misunderstanding which bears no significant bearing on the finding of accused-appellant's guilt.

Helenia's failure to comprehend defense counsel's question cannot be labeled as prevarication on her part. Far from it, Helenia's answer that she was at the coliseum to see their cocks fight was, in fact, responsive to defense counsel's question of what she was doing at the coliseum since her husband was already dead.

In any case, this apparent inconsistency is inconsequential to the trial court's finding of Helenia's credibility as it refers only to a minor and insignificant detail. Such minor inconsistencies do not destroy credibility. On the contrary, they manifest truthfulness and candor and erase any suspicion of rehearsed testimony.[12]

Accused-appellant likewise assails the prosecution's failure to present Ricky Babor as witness considering that Ricky was Joemari's companion during that fateful night. He contends that Ricky was a vital witness who could have really known who killed Joemari.

The contention is without merit. 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. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. This Court has ruled that the non-presentation of corroborative witnesses would not constitute suppression of evidence and would not be fatal to the prosecution's case.[13]

Absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion in consideration of the same, this Court is bound to respect its findings and to refrain from reviewing these findings of fact. As this Court has previously reiterated, the matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in light of the accused's behavior, demeanor, conduct and attitude at the trial. Consequently, conclusions of trial courts command great weight and respect.[14]

Lastly, accused-appellant argues that the attack was not attended by treachery since Joemari was not taken by surprise in view of the prior heated argument between them which should have placed Joemari on guard. We are not persuaded. The essence of treachery is that the attack comes without warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[15]

In the case at bar, Joemari was crossing the street when accused-appellant, together with a cohort, commenced the attack by throwing a stone hitting the unsuspecting Joemari at the back. Then a second stone hit Joemari at the back of his head causing him to fall. While Joemari was struggling to move and probably dazed from being hit at the back of his head, accused-appellant swiftly exploited Joemari's vulnerable position and delivered the coup de grace with a well-placed thrust to the chest aiming for the heart. As described by the trial court, it was "a thrust to kill". The fact that three (3) hours had elapsed since accused-appellant and Joemari figured in a verbal tussle may even have relaxed Joemari's guard for he could have left the coliseum much sooner had he feared an impending attack from accused-appellant. Plainly, the manner by which Joemari was killed can only be described as

treacherous. The attack commenced without warning and in a swift, deliberate and unexpected manner. Joemari was unarmed and the manner by which he was first immobilized and rendered vulnerable by hitting him first with a stone causing him to fall was definitely meant to remove Joemari's ability to resist or to escape.

Thus, the trial court correctly found accused-appellant guilty beyond reasonable doubt of the crime of Murder, penalized under Article 248 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.

The trial court's award of P40,500.00 as actual damages should be reduced to P11,000.00, this being the amount substantiated by receipts representing funeral expenses and services.[16] The amount of P29,500.00 representing various expenses was only contained in a certification by Joemari's wife, Vienna Rose Bedua. This list of expenses cannot be considered as competent proof and cannot replace the probative value of official receipts to justify the award of actual damages. The certification may even be considered as self-serving, and does not meet the requirement that a party seeking the award of actual damages must produce competent proof or the best evidence obtainable to justify such award. 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.[17]

On the other hand, in line with prevailing jurisprudence, we affirm the awards of P50,000.00 as civil indemnity[18] for the death of Joemari and P50,000.00 as moral damages.[19] Also, as held in *People v. Samson*[20] and *People v. Catubig*,[21] exemplary damages in the amount of P25,000.00 is proper in view of the attendance of the qualifying circumstance of treachery.

WHEREFORE, the decision of the Regional Trial Court of Cagayan de Oro City, Branch 19, in Criminal Case No. 97-1240, finding accused-appellant Marlon Bulfango y Peñafiel alias Juddie, alias Freddie Bulfango y Peñafiel, alias Marlon Navarro, guilty beyond reasonable doubt of Murder for the killing of Joemari A. Bedua, and sentencing him to reclusion perpetua and to pay the heirs of the deceased Joemarie Bedua the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages is **AFFIRMED** with **MODIFICATIONS**. As modified, accused-appellant is ordered to pay the heirs of the deceased the reduced amount of P11,000.00 as actual damages and the additional amount of P25,000.00 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Rollo, p. 1.

[2] Exhibit "B-1", Records, p. 7.

[3] Penned by Judge Anthony E. Santos of the Regional Trial Court of Cagayan de Oro City, Branch 19.

[4] Rollo, p. 54.

[5] Decision, Records, pp. 462-463.

[6] Exhibit "I", Records, p. 110.

[7] *People v. Liwanag*, G.R. No. 120468, August 15, 2001.

[8] *People v. Baniega*, G.R. No. 139578, February 15, 2002.

[9] *Ibid*.

- [10] Appellee's Brief, Rollo, p. 79.
- [11] TSN, September 14, 1998, pp. 18-19.
- [12] People v. Mallari, G.R. No. 103647, July 20, 1999.
- [13] Ibid.
- [14] People v. Aranjuez, G.R. No. 121898, January 29, 1998.
- [15] Ibid.
- [16] Exhibit "F", Records, p. 108.
- [17] People v. Bonifacio, G.R. No. 133799, February 5, 2002.
- [18] People v. Marquez, G.R. No. 136736, April 11, 2002.
- [19] People v. Boller, et al., G.R. No. 144222-24, April 3, 2002.
- [20] G.R. No. 124666, February 15, 2002.
- [21] G.R. No. 137842, August 23, 2001.

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