

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERLINDO BENSIG, ACCUSED-APPELLANT.

G.R. No. 138989. September 17, 2002

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case No. 4837-0, finding the appellant Erlindo Bensig guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of “forty (40) years reclusion perpetua” and to pay the aggrieved party the sum of fifty thousand pesos (P50,000) as civil indemnity, twenty thousand pesos (P20,000) as actual damages and fifty thousand pesos (P50,000) as moral damages.

The information, dated July 25, 1996, charged the appellant, Erlindo Bensig, of the crime of murder as follows:

“That on or about the 30th day of May 1996, at about 2:00 o’clock dawn, in Brgy. Don Potenciano Larrazabal, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused ERLINDO BENSIG, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, stab and wound the person of the victim herein LEONIDES VILLEGAS, without giving the latter sufficient time to defend himself, thereby inflicting upon him mortal wound which caused his instantaneous death. Medico-Legal Certificate is hereto attached.

In violation of Art. 248, RPC, as amended by R.A. 7659.

Ormoc City, July 25, 1996.”[2]

An order of arrest was issued on August 5, 1996, but the appellant was nowhere to be found.[3] On August 6, 1997, the trial court archived the case, pursuant to Administrative Circular No. 7-A-92, for the reason that the appellant remained at large for more than six (6) months[4] since the issuance and delivery of the warrant of arrest to the proper peace officer.[5]

On January 10, 1998, the appellant was finally arrested.[6] Correspondingly, the trial court revived the case in its order dated July 20, 1998 and set the case for arraignment on August 13, 1998.[7] Upon arraignment on said date, the appellant, with assistance of counsel, pleaded not guilty to the crime charged.[8]

In the pre-trial conference on September 2, 1998, the appellant and the prosecution stipulated on the following: (1) that Erlindo Bensig was the same Erlindo Bensig who stood charged in the information; (2) that Leonides Villegas was the victim who died, the same Leonides Villegas who was named in the information; (3) the date, time and place of the incident which was on May 30, 1996 at 2 a.m. in Barangay Don Potenciano Larrazabal, Ormoc City; (4) the fact of death of the victim; (5) that the victim died due to a stab wound and (5) the medical certificate of the victim issued by Dr. Edmund Kierulf.[9]

After the pre-trial conference, trial on the merits ensued. On April 12, 1999, the trial court rendered its decision, the dispositive portion of which reads as follows:

“Wherefore, after considering all the foregoing, the Court finds the accused Erlindo Bensig guilty beyond reasonable doubt of the crime of Murder as charged in the Information and hereby sentences him, after applying Art. 63 of the Revised Penal Code in relation to Art. 248 thereof, to an imprisonment of forty (40) years reclusion perpetua; to pay the aggrieved party the sum of P50,000 as indemnity, the sum of P20,000 as actual damages, the sum of P50,000 as moral damages.

If the accused is a detainee, the period of his detention shall be credited to him in full if he abides in writing by the terms and conditions for convicted prisoners, otherwise, for only four-fifths (4/5) thereof.

SO ORDERED.”[10]

The antecedent facts as culled from the testimonies of witnesses follow.

It was the fiesta of Barangay Don Potenciano Larrazabal, Ormoc City and there was dancing in the evening of May 29, 1996 in the tennis court which was then fenced, enclosed and adjacent to the barangay hall.[11] Spouses Leonides and Jenny Villegas who lived 20 minutes away in nearby Sitio Laray, Barangay Sto. Niño went to the fiesta by foot. They met Vic Villegas, nephew of Leonides, and watched the disco.[12]

At about 2:00 a.m. (already May 30, 1996), Leonides, with Jenny and Vic, stepped out of the dancing area to buy cigarettes in a nearby store inside the waiting shed.[13] Upon receiving his cigarettes and change, Leonides was suddenly stabbed by appellant Erlindo Bensig. The appellant came from the back of the victim and, upon coming face-to-face with him, appellant stabbed him in the left chest.[14] With the help of other people in the vicinity, the victim was brought to the hospital where he died upon arrival.[15]

Charged with killing the victim, appellant Erlindo Bensig set up the defense of denial. He testified that he actually saw the crime from the barangay hall which was about two arms’ length away from the crime scene and that it was not him but a certain Pepe Boya who stabbed and killed the victim.[16] Porceso Lodong and Jose Boya, who claimed that they were with the accused when the crime happened and who also allegedly witnessed the same, corroborated the appellant’s testimony.[17]

The trial court found the testimonies of the prosecution witnesses credible as against the testimonies of the defense witnesses. It ruled that prosecution witnesses Jenny and Vic Villegas positively and clearly identified the appellant as the perpetrator of the crime as they were just beside the victim when he was stabbed. Also, there was sufficient illumination coming from the electric bulb located at the center of the waiting shed where the store selling cigarettes was located.[18]

The trial court gave little credence to the testimonies of defense witnesses Porceso Lodong and Jose Boya. If indeed they knew all along that it was not their friend Erlindo Bensig who killed the victim, they should have so testified during the preliminary investigation when the appellant was given the time and opportunity to present his witnesses. But they did not. Also, the trial court found the flight of the appellant as a clear indication of his guilt. Appellant disappeared and could not be found from July 23, 1996[19] (or from August 5, 1996[20]) until January 10, 1998, the date of his arrest.[21]

Aggrieved by the decision of the trial court convicting him of murder, the appellant filed the instant appeal raising the following errors:

I

Giving full faith and credence to the version of the prosecution and disregarding defense evidence that it was not accused who stabbed the victim but a certain Pepe Boya.

II

Finding accused guilty beyond reasonable doubt of the crime of murder as charged.

The appellant attacks the credibility of the prosecution witnesses in the instant appeal before us. As this Court has time and again said, the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court is in a better position to decide such question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Its findings on the issue of credibility of witnesses and the consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case.[22]

After a careful scrutiny of the records and evidence of the case, we find no reason to depart from this well-entrenched rule on credibility. There is nothing to warrant a reversal of the decision of the trial court. Nevertheless, the issues raised by the appellant should be faced squarely.

Appellant contends that the testimonies of the two prosecution witnesses were in some material points clearly contradictory. He pointed out that while Vic Villegas testified that they were the only ones present when the victim was stabbed, Jenny Villegas, on the other hand, testified that there were other people in the vicinity.[23]

A careful examination of the testimony of Vic Villegas, however, shows that he never claimed that they were the only ones present. On the contrary, he testified that there were other people in the vicinity — some were observing the entertainment while others were dancing in the dancing hall which was just four to six meters from the scene of the crime.[24] In fact, Vic stated that when the victim fell down after he was stabbed, some people in the vicinity, a certain Mando Alboro and Beto Toledo, helped them carry the victim to the hospital.[25] Vic Villegas' testimony therefore was wholly consistent with the testimony of Jenny Villegas.

Appellant also contends that the testimony of Vic Villegas was not spontaneous and straightforward in that he failed to answer questions propounded to him during his cross-examination and for three times he had to be ordered by the court to make his answers complete.[26]

That Vic allegedly failed to answer questions during his cross-examination has no basis on record. All throughout his testimony, Vic answered candidly and spontaneously, and there was never a question that he failed to answer. Vic was asked by the trial court to make his answer complete only to one question; this question was only about the name of the specific place where the crime was committed. Vic's testimony now being questioned by the appellant is as follows:

Atty. Nicol:

Q: Where was Leonides then?

A: Fiesta.

Q: In what particular place?

A: Brgy. Don Pontenciano Larrazabal.

Court to the Witness:

You answer completely.

Atty. Nicol:

Q: Where was he particularly situated in Brgy. Don Pontenciano Larrazabal?

A: In the proper.

Court to the Witness:

Where in the barangay proper? You make your answer complete.

A: Near the Cen.

Q: What is this Cen?

A: A barrio.[27]

Surely, this particular point alone does not shatter his credibility, for an over-all examination of his testimony shows that he was consistent and clear in his narration of the principal occurrence and he never wavered in answering all the material questions regarding the crime.

Appellant further contends that Vic Villegas was a confused witness. He pointed out that Vic testified in his cross-examination that he was at the right side of the victim and the accused passed between them before stabbing the victim, but when asked by the trial court, Vic said that the accused passed by his right side.[28]

The inconsistency pointed out is minor and does not shatter the credibility of the witness and his testimony. We have repeatedly held that minor disparities in the narration of witnesses do not detract from their essential credibility, as long as their testimonies are coherent and intrinsically believable on the whole, particularly when, as in this case, there was consistency in the narration of the principal occurrence and in the positive identification of the accused.[29] Moreover, minor inconsistencies can serve to strengthen the witnesses' credibility as the variances are taken as badges of truth rather than as indicia of falsehood inasmuch as they negate the suspicion of rehearsed testimony.[30]

As a whole, the testimony of Vic Villegas shows that he was consistent in saying that he was beside the victim,[31] that the accused came from behind,[32] that he saw the face of the accused as he passed by him before stabbing the victim,[33] that the victim was stabbed on his left chest,[34] that the victim fell down and he caught him, that he shouted for help while the accused ran away[35] and that some people in the vicinity helped them carry the victim to the hospital where he died upon arrival.[36] His testimony corroborated that of Jenny Villegas in all material and essential points.

Jenny and Vic Villegas also clearly and positively identified the appellant as the perpetrator of the crime. They were able to clearly see his face inasmuch as they were just beside the victim when he was stabbed[37] and the place was well-illuminated by a fluorescent lamp located at the center of the waiting shed where the store selling cigarettes was located.[38] Furthermore, Jenny and Vic Villegas were already acquainted with the appellant prior to the crime as they always saw him in the marketplace of Don Pontenciano Larrazabal.[39]

We cannot discern any ill-motive on the part of prosecution witnesses Jenny and Vic Villegas in testifying against the appellant and pointing to him as the person who killed the victim. In fact, appellant himself admitted that Jenny and Vic Villegas had no such grudge against or misunderstanding with him as would impel them to wrongly impute to him the commission of the crime.[40] On the contrary, Jenny and Vic Villegas, wife[41] and nephew of the victim respectively, had more reason to ensure that the real perpetrator of the crime be punished if only to avenge the senseless death of the victim. It was unnatural for the victim's relative, interested in vindicating the crime, to falsely accuse somebody other than the real culprit. Where there is no evidence to indicate that the prosecution has been actuated by any improper motive and, absent any compelling reason to conclude otherwise, the testimony given is entitled to full faith and credit.[42]

Against the clear and positive testimony of the prosecution witnesses, appellant interposed the defense of denial.

He claimed that he was there, about four meters away, when the victim was stabbed but it was not him but a certain Pepe Boya who killed the victim. He presented Porceso Lodong and Jose Boya who claimed that they were with the appellant at the date and time of the crime while taking shelter from the rain outside the barangay hall and that the three of them – Lodong, Boya and the appellant — witnessed the crime personally.

The defense that it was another person who killed the victim is easy to fabricate. Courts have always weighed the defense of denial, like the defense of alibi, with considerable caution because this submission is inherently weak and unreliable, one that can easily be made up.[43] The defense of denial, unsubstantiated by clear and convincing evidence, is negative and self-serving, and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[44]

An examination of the testimonies for the defense shows that they lack credibility and persuasion. If indeed Porceso Lodong and Jose Boya were there with the accused at the date and time of the crime and that they themselves witnessed the crime and knew that appellant was not the one who stabbed the victim, then, as pointed out by the trial court, why did they not come forward with their testimonies as early as the preliminary investigation of the case? They claimed that they came to know that appellant was a suspect only when he was arrested a year-and-a-half after the commission of the crime and it was only then that they came forward with their testimonies.[45] But this statement is incredulous considering that they were neighbors[46] in a small sitio where people practically knew the everyday happenings of one another and the warrant of arrest was in fact served several times in the house of appellant.[47]

Not only that. As the friend[48] of the appellant, defense witness Jose Boya testified that he was in the constant company of the appellant after the crime was committed allegedly by a certain Pepe Boya and that they talked about the possibility of the appellant being tagged as a suspect; they supposedly agreed that Jose Boya would defend appellant's innocence.[49] Why, of all people in that vicinity, appellant would suddenly stand to be singled out as a suspect, the defense conveniently never bothered to explain.

The only reason given by the appellant why he thought he was suspected of killing the victim was that he was the only one known by the victim and his wife.[50] But this is hard to believe because, as stated above, it was unnatural for the victim's relative, who was interested in vindicating the crime, to falsely accuse somebody other than the real culprit.[51] Moreover, appellant himself admitted that prosecution witnesses Jenny and Vic Villegas had no grudge against or misunderstanding with him as would impel them to wrongly impute to him the commission of the crime.[52]

The truth of the matter is that defense witness Porceso Lodong and Jose Boya knew all along that appellant was the prime suspect and that he was at large for a year-and-a-half. And when appellant was finally arrested on January 10, 1998, it was only then that they decided to come forward with their contrived testimonies in a desperate attempt to free appellant from responsibility for the crime charged.

This self-serving denial of the defense cannot stand in the light of positive declarations of truthful eyewitnesses of the prosecution.[53] Affirmative testimony is far stronger than a negative one, especially when it comes from a credible witness.[54] Thus, as against the convincing testimony of the prosecution witnesses who positively identified the appellant as the person who killed the victim, appellant's defense of denial must necessarily fail.

Moreover, the fact that appellant fled right after the case was filed against him is a convincing indication of guilt. For one-year-and-a-half, he was nowhere to be found and the case had to be archived.[55] In his testimony, appellant offered no explanation for his flight and in fact lied that he never left his place, cultivating their land[56] when in fact the record shows that the arrest warrant was served several times in his residence and he was not there.[57] Settled is the rule that flight of an accused, when unexplained, is a circumstance from which an

inference of guilt may be drawn.[58]

In view of the foregoing, we find appellant guilty of the crime charged. Under Article 248 of the Revised Penal Code, the following are the essential elements of the crime of murder: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 and (d) that the killing is not parricide or infanticide.[59]

In the case at bar, the trial court correctly appreciated the attendance of treachery in qualifying the offense to murder. The two conditions before treachery may be properly considered in qualifying the offense to murder are: (a) the employment of means, methods or manner of execution to ensure the safety of the offender from defensive or retaliatory acts of the victim and (b) the deliberate adoption by the offender of such means, methods or manner of execution. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim who gave no provocation,[60] without affording the latter any real chance to defend himself and thereby ensuring the commission of the crime without risk to the aggressor.[61]

The evidence shows that the victim was unaware of the presence and impending attack of the appellant as he was then in the act of buying cigarettes. The appellant suddenly and unexpectedly came from behind and without warning stabbed him in the chest when he was about to receive his cigarettes and change. The victim was thus in no position to defend himself. Immediately prior to the attack, no altercation took place between the victim and the appellant and the victim gave no provocation whatsoever.[62] All these circumstances no doubt point to the employment of treachery in the commission of the crime.

The information alleged evident premeditation as another aggravating circumstance. However, the Court cannot take it against the appellant for lack of evidence on record. The prosecution did not present any evidence to prove evident premeditation and therefore, such circumstance cannot be considered against the appellant.[63]

Under Article 248 of the Revised Penal Code, as amended, murder is punishable by reclusion perpetua to death. Pursuant to Article 63 of the same Code, if the penalty prescribed by law is composed of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime. In the present case, no aggravating circumstances attended the commission of the crime.

There were only two aggravating circumstances which could have been appreciated against the appellant: evident premeditation and treachery. But evident premeditation, though alleged in the information, was never proven. Treachery, on the other hand, had already qualified the crime committed by the appellant to murder and may thus no longer be used for a second time to justify the imposition of the penalty of death.

Accordingly, the lesser penalty of reclusion perpetua was correctly imposed by the trial court upon the appellant for the crime of murder.

However, the trial court, in sentencing the appellant to suffer the penalty of reclusion perpetua, specified that the appellant should suffer imprisonment of "40 years." Though RA No. 7659, amending Section 27 of the Revised Penal Code, fixed the duration of reclusion perpetua from 20 years and 1 day to 40 years, reclusion perpetua was not thereby converted into a divisible penalty. As ruled by this Court in *People vs. Lucas*,[64] *People vs. Gatward*[65] and *People vs. Quitlong*,[66] in spite of the amendment putting the duration of reclusion perpetua at 20 years and 1 day to 40 years, there was no clear legislative intent to alter its original classification as an indivisible penalty, thus it remained indivisible.

This being so, there was no need for the trial court to specify the duration of reclusion perpetua imposed on the appellant. For the purpose of clarity and to avoid the misconception that reclusion perpetua has become a divisible penalty, the forty (40) years imprisonment specified by the trial court is hereby deleted. The appellant is simply

and appropriately sentenced to suffer the penalty of reclusion perpetua, without any specification of duration.

With respect to the award of damages, the civil indemnity in the amount of P50,000 awarded by the trial court to the heirs of the victim is hereby affirmed. And since the prosecution was able to sufficiently establish that the wife of the victim suffered pain, mental anguish and sleepless nights on account of the senseless death of her husband,[67] we likewise affirm the award of moral damages in the amount of P50,000.

The award of P20,000 as actual damages cannot be sustained inasmuch as no receipts were presented to prove the expenses incurred by the wife for the wake and burial of her husband. Without such evidence, the award of actual damages by the trial court cannot be sustained.[68]

WHEREFORE, the decision of the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case No. 4837-0, finding accused-appellant Erlindo Bensig guilty beyond reasonable doubt of the crime of murder is hereby AFFIRMED with MODIFICATIONS.

The penalty imposed upon the accused-appellant is the indivisible penalty of reclusion perpetua instead of “40 years reclusion perpetua” as ordered by the trial court.

The award of actual damages is hereby deleted for lack of evidence. Accused-appellant is ordered to pay the heirs of the victim P50,000 as civil indemnity and P50,000 as moral damages.

No costs.

SO ORDERED.

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

[1] Penned by Judge Fortunito L. Madrona; Rollo, pp. 14-17.

[2] Rollo, p. 6.

[3] Records, pp. 13-19, 21.

[4] In fact, the appellant remained at large for 1 year and 5 months since the issuance of the warrant of arrest; Records, pp. 13-19, 21-22.

[5] Records, p. 20.

[6] Records, p. 22.

[7] Records, p. 25.

[8] Records, pp. 30, 32.

[9] Records, pp. 43-45.

[10] Rollo, p. 17.

[11] TSN, December 9, 1998, p. 43.

[12] TSN, October 14, 1998, pp. 30-35.

[13] TSN, October 15, 1998, pp. 26-30, 47-48.

[14] TSN, October 15, 1998, pp. 14, 40-41.

- [15] TSN, October 15, 1998, pp. 10-17, 21-22,
- [16] TSN, December 8, 1998, pp. 7-8.
- [17] TSN, December 9, 1998, pp. 9-17; TSN, February 1, 1999, pp. 6-10.
- [18] Rollo, pp. 15-17.
- [19] The date of the resolution of the prosecutor finding probable cause that appellant committed the crime and resolving to file a case against him; Records, pp. 4-5.
- [20] The date of the issuance of the warrant of arrest; Records, p. 14.
- [21] Rollo, pp. 16-17.
- [22] *People vs. Chavez*, 278 SCRA 230 (1997); *People vs. Siguin*, 299 SCRA 124 (1998).
- [23] Appellant's Brief; Rollo, pp. 49-50.
- [24] TSN, October 15, 1998, pp. 14-16.
- [25] TSN, October 15, 1998, pp. 21-22.
- [26] Appellant's Brief; Rollo, p. 49.
- [27] TSN, October 15, 1998, pp. 23-24.
- [28] Appellant's Brief; Rollo, pp. 50-54.
- [29] *People vs. De Leon, et al.*, G.R. No. 144052, March 6, 2002, citing *People vs. Khor*, 307 SCRA 295 (1999), *People vs. Ebrada*, 296 SCRA 353 (1998) and *Sumalpong vs. CA*, 268 SCRA 764 (1997).
- [30] *People vs. Dinglasan*, 267 SCRA 26 (1997); *People vs. Khor*, 307 SCRA 295 (1999).
- [31] TSN, October 15, 1998, pp. 16, 23, 28-29.
- [32] *Id.*, pp. 38-41.
- [33] *Id.*, pp. 41-42.
- [34] *Id.*, p. 14.
- [35] *Id.*, p. 17.
- [36] *Id.*, p. 22.
- [37] TSN, October 15, 1998, p. 16; TSN, October 14, 1998, pp. 13, 46.
- [38] TSN, October 15, 1998, p. 14; TSN, October 14, 1998, p. 26.
- [39] TSN, October 15, 1998, pp. 17-18, 31-32; TSN, October 14, 1998, p. 50.
- [40] TSN, December 8, 1998, p. 25.
- [41] *People vs. Chavez*, 278 SCRA 230 (1997).
- [42] *People vs. Obosa*, G.R. No. 129688, April 2, 2002; *People vs. Cariño*, G.R. No. 129960, August 28, 2001.
- [43] *People vs. Henson*, 270 SCRA 634 (1997).

- [44] *People vs. Serrano*, 353 SCRA 161 (2001).
- [45] TSN, December 9, 1998, pp. 29-33, 55-58; TSN, February 1, 1999, pp. 23-30.
- [46] TSN, December 9, 1998, p. 31.
- [47] Records, pp. 13-19, 21-22.
- [48] TSN, February 1, 1999, p. 33.
- [49] TSN, February 1, 1999, 34-35.
- [50] TSN, December 8, 1998, p. 9.
- [51] *People vs. Obosa*, G.R. No. 129688, April 2, 2002; *People vs. Cariño*, G.R. No. 129960, August 28, 2001.
- [52] TSN, December 8, 1998, p. 25.
- [53] *People vs. Santos*, 276 SCRA 329 (1997)
- [54] *People vs. Estares*, 282 SCRA 524 (1997).
- [55] Records, p. 20.
- [56] TSN, December 8, 1998, p. 12.
- [57] Records, pp. 13-19, 21-22.
- [58] *People vs. Roman*, 314 SCRA 425 (1999); *People vs. Alvero*, 224 SCRA 16 (1993).
- [59] *People vs. Obosa*, G.R. No. 129688, April 2, 2002.
- [60] *People vs. Nardo*, 270 SCRA 672 (1997); *People vs. Valles*, 267 SCRA 103 (1997).
- [61] *People vs. Dagami*, 340 SCRA 170 (1999).
- [62] TSN, October 14, 1998, pp. 19-22; TSN, October 15, 1998, pp. 35-37.
- [63] *People vs. Quinao*, 269 SCRA 495 (1997); *People vs. Mier*, 324 SCRA 628 (2000).

[64] 310 SCRA 77 (1995).

[65] 267 SCRA 785 (1997).

[66] 292 SCRA 360 (1998).

- [67] TSN, October 14, 1998, pp. 23-25.
- [68] *People vs. Anivado*, 348 SCRA 74 (2000); *People vs. Fabrigas*, 261 SCRA 436 (1996).

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