

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PABLITO BELLO, JULITO BELLO (AT LARGE), DANILO BELLO (AT LARGE) & JOHN DOE, ACCUSED. PABLITO BELLO, APPELLANT.

G.R. No. 139054. December 09, 2002

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Valenzuela City, Branch 171, in Criminal Case No. 5871-V-96, finding appellant Pablito Bello guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The information, dated October 4, 1996 and signed by State Prosecutor II Honesto D. Noche, charged the appellant as follows:

“That on or about March 9, 1993,[2] within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with treachery, evident premeditation, abuse of superior strength and with intent to kill, did then and there willfully, unlawfully and feloniously shoot one ROMEO PENOSO, thereby inflicting upon the latter serious physical injuries which caused his death.

“Contrary to law.”[3]

Upon arraignment on December 6, 1996, accused Pablito Bello, appellant herein, with assistance of counsel, pleaded not guilty to the crime charged.[4] The rest of the accused are, up to the present, at large while one John Doe’s true name, real identity and present whereabouts are still unknown.[5] Trial on the merits ensued.

On May 31, 1999, the trial court rendered its decision, the dispositive portion of which reads:

“WHEREFORE, accused Pablito Bello, guilty beyond reasonable doubt of the offense charged, is hereby sentenced to reclusion perpetua with accessory penalty prescribed by law and to pay the proportionate costs.

“The accused is likewise ordered to pay the heirs of the victim the amount of P42,200.00 for the funeral, burial and wake of the deceased and to pay the death indemnity of P50,000.00.

“SO ORDERED.”[6]

The facts of the case, as testified to by prosecution witnesses Salvacion[7] and Ruben Penoso,[8] are as follows:

On May 9, 1993 at nine o’clock in the evening, Ruben Penoso, his wife Salvacion, their two children and Ruben’s brother, Romeo Penoso, were eating dinner inside their house in Area 6, Family Compound, Karuhatan, Valenzuela, Metro Manila. While eating, they heard a gunshot coming from the direction of their window. The window was damaged. Surprised, the spouses Penoso looked outside the window and saw Julito Bello aiming a gun at them. Julito Bello fired two more shots through the window and the victim, Romeo Penoso, fell down. He was hit on both thighs. The spouses Penoso then saw appellant Pablito Bello who was holding a knife and Danilo

Bello inside the house. Pablito rushed towards the victim and stabbed him in the chest. Meanwhile, Julito Bello and a certain Raul stayed outside the house. After the incident, the victim was brought to Fatima Hospital but he was pronounced dead on arrival.

Dr. Floristo Arizala, Jr., medico-legal officer of the National Bureau of Investigation, testified that the victim suffered a fatal stab wound measuring about one-half (1/2) centimeters on the left chest and an incised wound on the right chest. The victim also suffered two gunshot wounds on both thighs which were the result of a single gunshot. He explained that the point of entrance of the bullet was at the left thigh, exited the same thigh on the other side and entered the right thigh where the slug was recovered. He identified and affirmed the Certificate of Post-Mortem Examination[9] and the Autopsy Report[10] he executed wherein the cause of death, which was "stab wound, chest," was stated.[11]

On cross-examination, Dr. Arizala stated that the distance between the assailant and the victim, at the time the former shot the latter, could be beyond 24 inches. He could not tell the exact position of the victim because of the natural mobility of the legs. It is possible that there were more than one assailant considering the number and nature of the wounds (stab wound, incised wound and gunshot wounds) suffered by the victim.[12]

Rogelio G. Munar, ballisticsian of the National Bureau of Investigation, testified that, according to their ballistic examination, the slug recovered from the thigh of the victim was a caliber .38 lead copper-coated bullet fired from a .38 caliber firearm. On cross-examination, he said he did not test-fire the bullet because no firearm was involved in the ballistic examination.[13]

Guadalupe Penoso, mother of the victim, testified on the civil liability of the appellant. She said she incurred expenses arising from her son's death. She presented to the trial court a piece of paper containing an itemized list of expenses in the total amount of Forty-two Thousand Two Hundred Pesos (P42,200). The existence and due execution of the document were duly admitted by the defense.[14]

The testimonies of SPO1 Virgilio Villano and SPO1 Angeles Miranda were dispensed with because the defense and the prosecution agreed on the substance of their testimonies. They agreed that SPO1 Villano took down the statement of Ruben Penoso and Salvacion Penoso on May 16, 1993 while SPO1 Miranda took down the statement of Guadalupe Penoso.[15]

The defenses of the appellant were alibi and denial.

The appellant testified that, on the date and at the time the crime was committed (May 9, 1993 at nine o'clock in the evening), he was in Malabon, Metro Manila buying fish which he used to sell in Area 6, Karuhatan, Valenzuela, Metro Manila. He claimed that, prior to the incident, he did not know Salvacion Penoso, Ruben Penoso and the victim, Romeo Penoso. He admitted though that he went to Area 6, Family Compound the place of the occurrence of the crime. He lived in the town of Malabon, near a river in Sipac. He did not have any other residence. He denied knowing Julito Bello and Danilo Bello and knew nothing of the allegation that he stabbed and killed Romeo Penoso. He was arrested in 1996 but could not remember the exact date, time and month of the arrest. He remembered though that he was arrested in Karuhatan when he was about to leave for Malabon after selling fish. He was made to board a jeep by two policemen who told him to go with them to the police headquarters where he was detained. He claimed that he was not informed of the charge against him and that he was not assisted by counsel.[16]

On cross-examination, the accused said that he had been selling fish in Karuhatan for more than two years. On the date and at the time of the crime, he was in Malabon for two hours to buy fish. He left Malabon at ten o'clock in the evening to go to Area 6, Family Compound, Karuhatan to start selling fish. Inasmuch as he did not have any

store, he just roamed around the area selling fish. He admitted that he was familiar with Area 6, Family Compound, Karuhatan, Valenzuela, Metro Manila for the reason that he had been selling fish there for more than two years and even had several customers in the said place. But he denied knowing the victim and prosecution witnesses Ruben and Salvacion Penoso. He did not have any misunderstanding with the police officers who arrested him nor with any of the persons buying fish from him in Area 6, Family Compound.[17]

After trial, the court found the version of the prosecution to be more credible and convincing. According to the trial court, the prosecution convincingly established that, after Julito Bello fired through the window, appellant Pablito Bello and Danilo Bello entered the house, and appellant Pablito Bello stabbed Romeo Penoso. The trial court did not accept the alibi of the appellant due to his failure to clearly and convincingly demonstrate that it was physically impossible for him to be at the place of the crime at the time it was committed. The trial court also ruled that treachery was present because Pablito Bello and his companions attacked the unarmed and unsuspecting victim in a sudden and unexpected manner, leaving the latter in no position to flee or to defend himself. It thus convicted appellant Pablito Bello of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua.[18]

Hence, this appeal by Pablito Bello, based on this lone assignment of error:

“The trial court erred in holding that the killing of the victim Romeo Penoso was committed with the qualifying aggravating circumstance of treachery.”[19]

As this appeal opens the entire case for review, we examined the records of the case and we are convinced that the trial court did not err in ruling that the appellant was responsible for the death of the victim. The trial court gave full credence to the testimonies of prosecution witnesses Salvacion Penoso and Ruben Penoso who positively identified the appellant as the one who stabbed the victim.

It is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[20] In the case at bar, we find no reason to deviate from this rule.

The testimonies of Salvacion Penoso and Ruben Penoso were straight-forward and categorical. They positively and clearly identified the appellant, Pablito Bello, as the one who stabbed the victim in the chest.[21] When the victim was stabbed, Salvacion Penoso was only half-an-arm’s length away.[22] In addition, the testimonies of Salvacion and Ruben Penoso as to how the victim was attacked and where he sustained the injuries matched the post-mortem examination and autopsy report of Dr. Floristo Arizala.[23]

The relationship of the prosecution witnesses to the victim does not weaken the credibility of their testimonies. It cannot be assumed that, in seeking justice and punishment for the assailants, they would indiscriminately and irresponsibly point to the wrong parties. In fact, this Court has always ruled that blood relationship tends to strengthen witnesses’ credibility as the interest of the victim’s kinsmen is to secure the conviction of the guilty parties. This natural human inclination deters them from implicating persons other than the real culprits.[24]

Against the positive identification of the prosecution witnesses, the appellant put up the defenses of alibi and denial. He denied knowing the victim and his relatives and claimed that, at the time the crime was committed in Karuhatan, Valenzuela, Metro Manila, he was in Malabon buying fish. It is well-settled jurisprudence that alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because of its susceptibility to fabrication without much opportunity to check or rebut it. For this defense to prosper, the accused must prove not only that he was somewhere else when the crime was committed but also that he could not have been physically present at the scene of the crime or even its immediate

vicinity at the time of its commission.[25] The requisites of time and place must be strictly met.[26]

In the case at bar, the defense of alibi was not clearly and convincingly established. The appellant failed to demonstrate that his presence at the place of the crime at the time it happened was physically impossible. Malabon, where the appellant claimed he was at that time, is an adjacent town of Valenzuela. Appellant could have traveled with ease from Malabon to the scene of the crime in Valenzuela in a matter of minutes on that particular night to take part in the crime. Public utility vehicles ply the said route twenty-four hours a day. In addition, no corroborative evidence was presented[27] to substantiate the claim that, indeed, the appellant was in Malabon buying fish when the crime was committed. Accordingly, the bare assertions of the appellant cannot prevail over the positive testimonies of the prosecution witnesses. As between the unproven self-serving testimony of the appellant and positive identification by the prosecution witnesses, the latter deserves greater belief.

For treachery to exist, the offender must “commit any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.”[28] The essence of treachery is the suddenness and unexpectedness of the attack on the victim, leaving him unable and unprepared to defend himself or to repel the attack.[29] To appreciate treachery, two conditions must be present: (1) the employment of means of execution that gives the person attacked no opportunity for self-defense or for retaliation and (2) the deliberate or conscious adoption of the means of execution.[30]

In the case at bar, we find that the trial court properly appreciated the presence of treachery in the commission of the crime.

The appellant and his co-accused made the attack in a sudden, unexpected and swift manner, affording the victim Romeo Penoso no chance to escape or to repel the attack. The victim was caught unaware as he was peacefully eating dinner with his brother and sister-in-law when suddenly one of the accused fired at them. The events that followed happened very fast. The victim did not have the chance to escape or defend himself. The suddenness and swiftness of the attack were described in the testimonies of prosecution witnesses Salvacion Penoso and Ruben Penoso.

Testimony of Salvacion Penoso:

“Q:

And what were you doing inside the house of the said date and time?

“A:

We were eating, sir.

“Q:

While you were eating do you remember having witnessed any unusual incident that took place on said date and time?

“A:

I heard a shot.

“Q:

And after you heard a shot what did you do?

“A:

I was frightened and I saw them.

“Q:

Now, how did you come to see them when you were eating?”

“A:

I stood up and saw them entered (sic) our house and stabbed (sic) my brother-in-law.”[31] (*Italics ours*)

Testimony of Ruben Penoso:

“Q:

And while you were eating, do you remember having witnessed any unusual incident that might have happened?

“A:

Yes, sir.

“Q:

What was that unusual incident that happened?

“A:

I was surprised when there was a shot from the window.

“xxx xxx xxx

“Q:

Now according to you while you were eating, together with your wife and your brother, you heard gunshot outside, what did you do next after you heard it?

“A:

I was surprised and I saw Julito aiming a gun at the window.

“Q:

Towards what direction was the point of the gun aimed?

“A:

To us.

“Q:

And after you heard the gunshot and saw Julito Bello holding the gun, what happened next?

“A:

He made a shot again and I saw my brother fell down.

“xxx xxx xxx

“Q:

Now, what happened to your brother when he was shot by Julito Bello?

“A:

He fell down.

“Q:

And after he fell down, what did you do?

“A:

I helped him when I saw the two men entered (sic) the house. Pablito and Danilo entered the house, holding a knife.

“Q:

Now as you were helping your brother and according to you, you saw Pablito and Danilo entered your house, what did you do next, Mr. Witness?

“A:

I was not able to do anything, and they rushed towards my brother and stabbed him and I ran away.”[32]
(Italics ours)

It is apparent from the above-stated testimonies that the attack was done suddenly and swiftly by the appellant and his companions. Though the acts of shooting and stabbing were committed by different persons, no considerable interval of time occurred in between. For this reason, we cannot accept the contention of the appellant that the gunshots were sufficient warning for the victim to defend himself from being attacked by him with a knife.[33] The attack was one continuous act, suddenly and swiftly perpetrated by the appellant and his companions, to insure the execution of the crime without any risk to themselves. In continuous aggression, treachery is appreciated when it is shown that it is present at the very inception of the attack.[34]

In this case, the start of the attack was attended by treachery. The aggression was executed through a continuous

chain of treacherous acts which cannot be broken up to constitute separate, distinct and independent attacks.[35]

The fact that the location of the fatal stab wound was in front does not in itself negate treachery. A frontal attack can still be considered treacherous if totally unexpected by the victim.[36] In the case at bar, the stabbing was part of the attack that was totally unexpected by the victim. In addition, the testimony of Ruben Penoso showed that the victim was prostrate on the ground (he fell down after he was shot in both thighs) when he was stabbed by the appellant on the chest.

As Ruben Penoso testified:

“Q:

Now, what happened to your brother when he was shot by Julito Bello?

“A:

He fell down.

“Q:

And after he fell down, what did you do?

“A:

I helped him when I saw the two men entered the house. Pablito and Danilo entered the house, holding a knife.

“Q:

Now as you were helping your brother and according to you, you saw Pablito and Danilo entered your house, what did you do next, Mr. Witness?

“A:

I was not able to do anything, and they rushed towards my brother and stabbed him and I ran away.”[37]
(Italics ours)

The fact that the victim was already lying on the ground when he was stabbed by the appellant clearly supports the presence of treachery, not only at the start of the attack when he was hit by gunshots on both thighs but even up to the very moment when he was stabbed by the appellant on the chest.

It has been sufficiently shown therefore that the appellant and his companions executed the attack in a manner that insured the successful commission of the crime without any risk to themselves. The fact that the appellant and his companions went to the house where the victim was and suddenly attacked him showed that they deliberately and consciously adopted such treacherous means of attack. Therefore, we find that the two requisites of treachery were sufficiently proven.

The information alleged two other aggravating circumstances, namely, abuse of superior strength and evident premeditation. We cannot appreciate the element of abuse of superior strength for the reason that it was absorbed by treachery. On the other hand, we cannot favorably consider the presence of evident premeditation because the prosecution failed to present any evidence to prove its existence in the commission of the crime. Like other qualifying circumstances, the elements of evident premeditation must be established with equal certainty and clarity as the criminal act itself before it can be appreciated as a qualifying circumstance.[38]

All things considered, this Court is convinced that the appellant Pablito Bello inflicted the fatal stab wound killing the victim Romeo Penoso. The crime was committed with treachery, hence he is guilty of the crime of murder for which the Revised Penal Code imposes the penalty of reclusion perpetua to death. In as much as no other aggravating circumstances were proved^[39] and no evidence was presented to show that the accused is a habitual criminal,^[40] the penalty of reclusion perpetua imposed by the trial court is correct.

For the civil liability of the accused, we hereby rule that he is liable to the heirs of the deceased in the amount of P50,000 as civil indemnity ex delicto. For actual damages, the P42,200 proved to have been incurred, and awarded by the trial court, is affirmed.

WHEREFORE, the decision of the Regional Trial Court of Valenzuela City in Criminal Case No. 5871-V-9 is hereby AFFIRMED. The appellant Pablito Bello is found guilty beyond reasonable doubt of crime of murder, as defined and punished by Article 248 of the Revised Penal Code. He is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of the victim the amount of P50,000 as civil indemnity ex delicto and P42,200 as actual damages.

No costs.

SO ORDERED.

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

[1] Penned by Judge Adriano R. Osorio; Rollo, pp. 19-27.

[2] The trial court ruled that it was sufficiently established that the crime was committed on May 9, 1993 and not March 9, 1993 as alleged in the Information. Rollo, p. 27.

[3] Rollo, p. 7.

[4] Records, pp. 3-4.

[5] Decision; Rollo, p. 19.

[6] Rollo, p. 27.

[7] TSN, October 20, 1997, pp. 1-11; TSN, February 4, 1998, pp. 1-8.

[8] TSN, April 15, 1998, pp. 1-14; TSN, July 13, 1998, pp. 1-5.

[9] Exhibit "D"; Records, p. 149.

[10] Exhibit "E"; Records, p. 150.

[11] TSN, September 1, 1997, pp. 2-6.

[12] TSN, September 1, 1997, pp. 6-7.

[13] TSN, September 26, 1997, pp. 1-6.

[14] TSN, March 3, 1998, pp. 1-3.

[15] TSN, August 26, 1998, pp. 1-4; Records, p. 90.

[16] TSN, January 29, 1999, pp. 1-7.

- [17] TSN, January 29, 1999, pp. 7-11.
- [18] Rollo, pp. 19-27.
- [19] Appellant's Brief; Rollo, pp. 45-57.
- [20] People vs. Rodolfo Castellano, G.R. 130596, February 15, 2002; Espano vs. Court of Appeals, et al. 258 SCRA 558, 563 (1998).
- [21] TSN, October 20, 1997, pp. 4-7; TSN, April 15, 1998, p. 11.
- [22] TSN, October 20, 1997, p. 9.
- [23] Records, pp. 149-150.
- [24] People vs. Pedro Cariño, G.R. No. 129960, August 28, 2001; People vs. Ayupan, G.R. No. 140550, February 3, 2002.
- [25] People vs. Marollano, 276 SCRA 84, 110 [1997].
- [26] S/Sgt. Elmer T. Vergara vs. People, G.R. No. 128720, January 23, 2002; People vs. Basao, 310 SCRA 743 [1999].
- [27] People vs. Basao, 310 SCRA 743 [1999].
- [28] Revised Penal Code, Article 14, Section 16; People vs. Suyum, G.R. No. 137518, March 6, 2002.
- [29] People vs. Rodolfo Hilario, G.R. No. 128083, March 16, 2001; People vs. Bagcal, 350 SCRA 402 [2001].
- [30] People vs. Ayupan, G.R. No. 140550, February 13, 2002.
- [31] TSN, October 20, 1997, pp. 5-6.
- [32] TSN, April 15, 1998, pp. 6-11.
- [33] Appellant's Brief; Rollo, p. 56.
- [34] People vs. Zumil, 275 SCRA 182 [1997]; People vs. Basao, 310 SCRA 743 [1999]; People vs. Ayupan, G.R. 140550, February 13, 2002.
- [35] People vs. Basao, 310 SCRA 743 [1999].
- [36] Ibid., 776.
- [37] TSN, April 15, 1998, p. 11.
- [38] People vs. Sitchong y Tayag, G.R. No. 134362, February 27, 2002.
- [39] Revised Penal Code, Article 63, Section 2.
- [40] Revised Penal Code, Article 62, Section 5.

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