

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALVIN VILLANUEVA, APPELLANT.

G.R. No. 139177. August 11, 2003

Ponente: CORONA, J.

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CORONA, J.:

For automatic review is the decision[1] of the Regional Trial Court, Branch 32, stationed in Agoo, La Union, finding appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of death and to indemnify the heirs of the victim in the amounts of P50,000 as civil indemnity, P600,000 for actual damages and P1,000,000 for lost earnings.

The information that charged appellant for the offense alleged:

That on or about the 16[th] day of November, 1996, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery and being then armed with a knife, did then and there wilfully, unlawfully and feloniously attack, assault and stab with said knife one OTO-LEO BINAY-AN BRABANTE from behind, inflicting three (3) stab wounds upon the latter, one of which penetrated his heart, which directly resulted to (sic) his death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[2]

On arraignment, appellant pleaded not guilty to the charge. Forthwith, trial on the merits ensued. While the prosecution was adducing its evidence, appellant escaped from detention on October 9, 1997. The lower court thus proceeded with the trial of the case in absentia in accordance with Section 14(2), Article III of the 1987 Constitution.

The facts follow.

On November 15, 1996, at around 12 midnight, Marife Brabante was attending to her duties as cashier of the Highlander Store owned by her mother, Rita Binay-an, at Barangay Saitan, Camp 1, Rosario, La Union. She was assisted by Cheryl Dapiaoen and George Bautista. They were about to close the store when appellant, together with a certain Jerry, Teddy and an unidentified person, arrived. They occupied one of the tables and started drinking the liquor which they brought with them. Appellant then asked Marife if they could stay until 5:00 a.m. but Marife refused since they were unruly. When the group was about to leave, Cheryl asked appellant to pay the amount of P35 as cover charge. At this point, appellant became angry and threw two bottles of gin on the floor. Marife's brother, Orland, who was sleeping in one of the rooms of the store, was awakened by the noise. He went out and told appellant not to create trouble. But appellant shoved him and left with a warning that he would return to kill somebody. Appellant got on his tricycle and bumped the door of the store while his companions threw rocks at it.

Meanwhile, Marife's other brother, Otoleo, got up from his bed and asked Cheryl to go with him to buy balut at

the nearby Seven Star Store, which was only eight meters away from their store. After 30 minutes, appellant returned to Highlander Store with a knife. He walked past Marife and told her that she was not the one he was going to kill. Appellant went toward the Seven Star Store where Otoleo and Cheryl were then buying balut. Upon reaching the store, appellant suddenly stabbed Otoleo at the back. The victim turned to face appellant but the latter again stabbed him twice on the left armpit. Otoleo fell to the ground and appellant ran away. Marife, who was outside the Highlander Store, rushed to the bloodied body of her brother and hugged him. She brought the victim to the Rosario District Hospital in Rosario, La Union where he was declared dead on arrival.

Dr. Godofredo Garcia of the Rosario District Hospital, La Union conducted a post mortem examination on the cadaver of Otoleo and prepared his findings and the death certificate showing the following:

Rigor mortis, stabbed (sic) wound, 2 cm. arm, clavicular area (L), 3 inches deep 2 cm. arm posterior aspect (L), axilla 2 inches; penetrating wound thru the 5th intercostal space, anterior axillary line with hemothorax (L) lung with clotted blood; penetrating wound, lung (L), pericardial sac with hematoma, penetrating (L) auricle and ventricle.[3]

Rita Binay-an, mother of the victim and owner of the Highlander Store, testified on the civil aspect of the case. She claimed to have spent the amount of P600,000 in connection with the death of her son. According to Rita, Otoleo was a second lieutenant in the Philippine Marines at the time of his death.

As earlier noted, appellant escaped from prison before the prosecution had completed the presentation of its evidence. Hence, he was deemed to have waived his right to present his evidence to dispute the charge.[4]

After trial on the merits, a decision was rendered by the trial court on November 20, 1997 convicting appellant of the offense charged:

WHEREFORE, in view of all the foregoing considerations, the accused ALVIN VILLANUEVA is hereby found GUILTY of the crime of MURDER as charged in the Information. He is hereby sentenced to DEATH, and to pay P50,000.00 for the death of the victim, indemnify the heirs of the victim in the amount of P600,000.00 actual damages, P1,000,000.00 in loss of earning and to pay the cost of the proceedings.

SO ORDERED.[5]

In his Brief, appellant insists that the trial court erred:

I

IN GIVING FULL FAITH AND CREDIT TO THE INCREDIBLE AND HIGHLY INCONSISTENT, IF NOT CONFLICTING, TESTIMONIES OF THE PROSECUTION WITNESSES ANENT THE INCIDENT IN QUESTION.

II

IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

III

IN CONVICTING HIM OF MURDER SINCE THE QUALIFYING CIRCUMSTANCES OF TREACHERY, EVIDENT PREMEDITATION AND NIGHTTIME ARE WANTING AND IN ERRONEOUSLY CONSIDERING FURTHER THE ACCUSED-APPELLANT'S ESCAPE AS AN AGGRAVATING CIRCUMSTANCE, THUS THE PENALTY IMPOSED UPON HIM MUST BE ACCORDINGLY REDUCED.[6]

We shall jointly discuss the assigned errors since they are interrelated.

Appellant questions the credibility of prosecution witnesses Marife Brabante and Cheryl Dapiaoen as their testimonies were patently inconsistent and conflicting on material details. Appellant points out the following inconsistencies and contradictions in the testimonies of Marife and Cheryl:

- (1) Marife first testified that appellant and his group arrived at the Highlander Store at around 12 midnight^[7] but later on declared that they arrived at around 12:45 a.m.^[8]
- (2) Marife stated on direct examination that her brother, Orland, did not go out of his room when appellant became unruly.^[9] On cross-examination, however, she admitted that Orland went out of his room.^[10]
- (3) Marife averred that appellant had three companions when he entered the Highlander Store.^[11] On the other hand, Cheryl testified that appellant had four companions at that time.^[12]
- (4) Marife insisted that appellant's companions were nearby and laughing when he stabbed Otoleo.^[13] This was contrary to Cheryl's testimony that appellant's companions were merely observing the incident .^[14]
- (5) Marife claimed that she rushed to help her brother, Otoleo, when he fell down,^[15] while Cheryl declared that she had to call Marife to inform her that Otoleo was stabbed by appellant.^[16]

While the testimonies of the two prosecution witnesses differed in some respects, the aforementioned inconsistencies and discrepancies referred to collateral and minor matters. The details cited by appellant such as the exact time of their arrival at the store, the number of companions he had at the time he entered the store and the demeanor of his companions when he stabbed Otoleo, are all insignificant and inconsequential considering that they had nothing to do with the main scope of the inquiry -- the murder allegedly committed by appellant. Further, a miscalculation of time is too flimsy a reason to discredit a witness, especially where the exact hour is not an essential element of the offense, as in this case. Likewise, since several months had passed before Marife and Cheryl recounted their story before the trial court, it was impossible for them to have a total recall of the incident.

Indeed, neither inconsistencies on trivial matters nor innocent lapses affect the credibility of witnesses and the veracity of their declarations. On the contrary, they may even be considered badges of truth on material points in the testimony.^[17] The testimonies of witnesses must be considered and calibrated in their entirety and not in truncated portions or isolated passages.^[18] In the instant case, the testimonies of Marife and Cheryl were clearly consistent vis-a-vis the substantial aspects of the crime, i.e., the identification of appellant as the perpetrator of Otoleo's death and the manner by which the crime was committed.

Although it is incumbent on the prosecution to establish the guilt of the accused beyond reasonable doubt, to justify acquittal based on such ground, the doubt should relate to the facts constitutive of the crime charged.^[19] Discrepancies should touch on significant matters crucial to the guilt or innocence of the accused. Conversely, inconsistencies in details irrelevant to the elements of the crime are not grounds for acquittal.^[20] Besides, as held in numerous decisions, when there is no evidence that the principal witness for the prosecution is moved by improper motives, such witness is entitled to full faith and credit.^[21] Certainly, Marife and Cheryl, in identifying appellant as the assailant, had no other motive than to seek justice for the death of Otoleo.

It should also be noted that the testimonies of Marife and Cheryl were corroborated on material points by the expert testimony of Dr. Garcia who conducted the post mortem examination on the body of Otoleo Brabante. He declared:

PROSECUTOR CATBAGAN:

Q: And what was your finding in the person of the victim?

A:

Post mortem examination reveals that the victim is already rigor mortis. There is stabbed (sic) wound in the arm, clavicular area left armpit. And the most fatal wound is in the armpit. The penetrating wound entering the heart and the lungs. There is a presence of clotted blood in the left lung. And the pericardial sac with hematoma, the cause of heart cardiac, left uricle and ventricle.

Q: How many wounds were there, doctor?

A: There were three wounds.

Q: And how deep are those wounds?

A: The two wounds in the left is 3 inches deep and the left axillary penetrating and almost left the heart and fatal wound. So that caused the death.

Q: Could you determine by those wounds what was the weapon used?

A: Sharp bladed weapon, sir.

COURT:

Q: Is it bladed?

A: Yes, sharp pointed bladed weapon, sir.

PROSECUTOR CATBAGAN:

Q: By the location of the wounds, could you determine the position of the assailant at the time he hit the victim?

A:

The assailant is at the back because of the posterior arm, while this axilla, the fatal wound is on the side. So when the assailant is raising hand he thrust and injured him at the side. Supposing the assailant is right handed the possibility is in front or on the side.[22]

Clearly, the physical evidence amply reinforced the testimonies of Marife and Cheryl that appellant stabbed Otoleo with a hunting knife, once at the back and twice at the side. Physical evidence is a mute but eloquent testimony of the truth and rates high in the hierarchy of trustworthy evidence.[23]

The case of the prosecution was greatly strengthened by appellant's escape from confinement during trial and by his failure to turn himself in despite subsequent conviction by the trial court. It was only on November 2, 1998, one year after the trial court had promulgated its decision, when appellant was finally recaptured.[24] It is well-established that the flight of an accused is competent evidence of guilt and culpability, and, when unexplained, flight is a circumstance from which an inference of guilt may be drawn.[25] It must be stressed nonetheless that appellant's conviction in this case was premised not on this legal inference alone but on the overwhelming evidence presented against him. The witnesses' positive identification of appellant and narration of the circumstances of the victim's death were sufficiently corroborated by the testimony of the physician who examined the victim's body, and by the autopsy report. These considerations convince the Court beyond reasonable doubt that appellant was the perpetrator of the crime.

The trial court, in imposing the death penalty on appellant, found that treachery, evident premeditation and nighttime attended the commission of the crime. It also considered appellant's escape from detention as an aggravating circumstance.

The court a quo properly appreciated treachery against appellant which qualified the crime to murder, as evidenced by the salient parts of Marife's testimony, thus:

COURT:

Q: Did you see Alvin Villanueva was armed when he approached you?

A: Yes, sir.

Q: What is that arm or what kind of arm is that?

A: Rambo knife, sir.

Q: Can you describe this Rambo knife?

A: The length is long, like this (Witness demonstrating the length more than a foot and bladed knife).

ATTY. SAN JUAN:

Q: So when you saw them running towards your brother, what happened next?

A: He suddenly stabbed him at the back, sir.

Q: What else happened?

A: And he also stabbed at the left armpit.

COURT:

Q:

Demonstrate how? (Witness going down from the witness stand and demonstrate (sic) how the accused stabbed Otoleo Brabante. Witness thrusting the knife).

A:

Then Alvin Villanueva stabbed Otoleo at the back with his right hand. Then the brother turned to face the assailant and the assailant thrust the victim at the left armpit.[26]

It was clearly established that appellant attacked the victim suddenly, without warning and from behind, and when the unarmed victim tried to face appellant, the latter stabbed him again twice on his left armpit, thus giving the victim no time to flee or to prepare for his defense or enable him to offer the least resistance to the sudden assault. Treachery exists when the means, method or manner of attack employed by the accused assures no risk to himself from any defensive or retaliatory act which the victim might take.[27]

We do not, however, agree with the trial court that evident premeditation attended the commission of the crime in this case. The qualifying circumstance of evident premeditation must be established with equal certainty and clearness as the criminal act itself. It must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning. In this case, no sufficient evidence exists to show that the requisites of evident premeditation were present, to wit: (a) the time when the offender decided to commit the crime; (b) an act manifestly indicating that he held on to his determination to commit it; and (c) a sufficient lapse of time between determination and execution to allow him to reflect upon the consequences of his act and for his conscience to overcome the resolution of his will after he decided to hearken to its warnings.[28] This circumstance cannot be appreciated against appellant as no evidence was adduced to show that the killing was the result of meditation, calculation or resolution on his part. There was no proof that, when appellant went to the Highlander Store, he already had plans to kill Otoleo. Neither was there any evidence of the time when the intent to commit the crime

was engendered in the mind of appellant. Likewise, the time interval of 30 minutes between the altercation at the Highlander Store and the actual assault on Otoleo was too brief to have enabled appellant to ponder over the consequences of his intended act.

The trial court also erred in appreciating nighttime as an aggravating circumstance. At the outset, it should be noted that the circumstance of nighttime was not alleged in the information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. And even if alleged, nighttime cannot properly be considered in this case because, although the crime was committed late at night, there was no evidence that nighttime facilitated the commission of the crime, or that it was specially sought by the offender to ensure the commission thereof, or that the offender took advantage of it for impunity.[29] The record does not show that appellant deliberately sought the cover of darkness when he assaulted Otoleo Brabante. The prosecution established no more than the simple fact that the crime was committed at night.

Moreover, the lower court improperly considered appellant's escape from detention as an aggravating circumstance. The enumeration of aggravating circumstances under Article 14 of the Revised Penal Code is exclusive[30] and flight is certainly not one of those specified in said article.

The penalty for murder under Article 248 of the Revised Penal Code as amended by RA 7659 is reclusion perpetua to death. Inasmuch as the crime was not attended by any aggravating circumstance, the penalty to be imposed upon appellant must be the lesser penalty of reclusion perpetua.[31]

The award of P50,000 as civil indemnity should be upheld without need of proof, the same being in accordance with prevailing jurisprudence and the policy of the Court.[32]

However, we do not find the grant of P600,000 for actual damages to be properly substantiated by evidence. The trial court based its award mainly on the testimony of the victim's mother and on the submitted list of expenses allegedly incurred in connection with the death, wake and burial of the victim. The award of actual damages may not be made on the basis alone of a handwritten enumeration of the supposed expenses incurred.

The recent case of *People vs. Abrazaldo*[33] allows the grant of temperate damages in the amount of P25,000 if there is no evidence of burial and funeral expenses. This is in lieu of actual damages as it would be unfair for the victim's heirs to get nothing, despite the death of their kin, for the reason alone that they cannot produce any receipts. We also ruled there that temperate and actual damages are mutually exclusive in that both may not be awarded at the same time, hence, no temperate damages may be granted if actual damages have already been granted.

In the present case, only the amount of P13,100 was supported by receipts.[34] Ordinarily, this is all Otoleo Brabante's heirs should be entitled to by way of actual damages. However, we find this anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages to the extent of P13,100 only, would be in a worse situation than, say, those who might have presented no receipts at all but would now be entitled to P25,000 temperate damages.

We therefore rule that when actual damages proven by receipts during the trial amount to less than P25,000, as in this case, the award of temperate damages for P25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds P25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

Likewise, we cannot sustain the grant of P1,000,000 for loss of earnings. No document whatsoever was submitted to support such an award. The indemnification for loss of earning capacity partakes of the nature of actual damages, which must be duly proven.[35] In this case, Rita Binay-an, mother of the victim, merely declared that

her son was a second lieutenant in the Philippine Marines but gave no statement of her son's monthly salary. Thus, the trial court simply presumed the amount of Otoleo's earnings. Since the prosecution did not present any evidence of the current income of the victim, the indemnity for lost earnings was speculative and must be rejected.

Moral damages cannot also be awarded because no evidence, testimonial or otherwise, was presented by the prosecution to support it. As to exemplary damages, the law is clear that they can be recovered in criminal cases only when the crime is committed with one or more aggravating circumstances,[36] none of which was present in this case.

WHEREFORE, the decision of the court a quo is hereby **AFFIRMED** with **MODIFICATION**. Appellant Alvin Villanueva is found guilty of murder and is accordingly sentenced to reclusion perpetua. He is also ordered to pay the heirs of the victim the amounts of P50,000 as civil indemnity and P25,000 as temperate damages. The award for the loss of earning capacity of the deceased is deleted.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, and Tinga, JJ., concur.
Callejo, Sr., J., on leave.

[1] Penned by Executive Judge Leo M. Rapatalo, Rollo, pp. 15-28.

[2] Rollo, p. 6.

[3] Record, p. 9.

[4] People vs. Mapalao, 197 SCRA 79 [1991].

[5] Rollo, pp. 27-28.

[6] Rollo, p. 49.

[7] TSN, July 29, 1997, p. 4.

[8] TSN, July 30, 1997, p. 6.

[9] TSN, July 30, 1997, p 9.

[10] TSN, July 31, 1997, p. 4.

[11] TSN, July 29, 1997, p 7.

[12] TSN, July 31, 1997, p. 16.

[13] TSN, July 29, p. 10.

[14] TSN, August 4, 1997, p. 3.

[15] TSN, July 29,1997, p.10.

[16] TSN, August 4, 1997, pp. 4 and 9.

[17] People vs. Alfeche, 294 SCRA 352 [1998].

[18] People vs. Cula, 329 SCRA 101 [2000].

- [19] *People vs. Calma*, 295 SCRA 629 [1998].
- [20] *People vs. Maglente*, 306 SCRA 546 [1999].
- [21] *People vs. Nava*, 306 SCRA 15 [1999]; *People vs. Balad*, 274 SCRA 695 [1997]; *People vs. Pija*, 245 SCRA 80 [1995].
- [22] TSN, October 15, 1997, pp 4-5.
- [23] *People vs. Nepomuceno*, 298 SCRA 450 [1998].
- [24] Record, p. 124.
- [25] *People vs. Gomez*, 251 SCRA 455 [1995].
- [26] TSN, July 29, 1997, pp. 8-9.
- [27] *People vs. Unarce*, 270 SCRA 756 [1997].
- [28] *People vs. Elijorde*, 306 SCRA 188 [1999].
- [29] *People vs. Prades*, *supra*.
- [30] *People vs. Regala*, 329 SCRA 707 [2000].
- [31] Article 63 (2), Revised Penal Code.
- [32] *People vs. Borreros*, 306 SCRA 680 [1999].
- [33] G.R. No. 124392, February 4, 2003.
- [34] Exhibit D, p. 80, Record.
- [35] *People vs. De Vera*, 312 SCRA 640 [1999].
- [36] Article 2230, Civil Code.

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