PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO PERRERAS @ PEPOT AND BOY FERNANDEZ (AT LARGE), ACCUSED.

G.R. No. 139622. July 31, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ACCUSED-APPELLANT PEDRO PERRERAS alias "Pepot" was found guilty by the court a quo of murder for the killing of Estanislao Salo and sentenced to death. He was ordered to pay the heirs of the victim P75,000.00 for civil indemnity, P91,803.59 for actual and compensatory damages, P1,728,000.00 for lost earnings and P100,000.00 for moral damages. His conviction is now the subject of this automatic review.[1]

Meanwhile, his co-accused BOY FERNANDEZ has remained at large, hence is not included in this Decision.

On the night of 21 July 1998 in Bacayao Norte, Dagupan City, accused-appellant Pedro Perreras, a former resident of the barangay, and Boy Fernandez, his nephew, approached Leonardo Salazar who was engaged in idle banter with some barriomates at the neighborhood waiting shed. Pedro asked Leonardo if Manoling Pastoral was home. When Leonardo nodded, Pedro asked for directions to go to Manoling's house. Feeling almost suffocated in the crowded waiting shed, Leonardo excused himself and walked towards the house of Estanislao Salo ten (10) meters away for some refreshing air.[2] Soon after Pedro and Boy followed, each holding a bottle of beer. The two (2) approached the son of Estanislao by the name of Joel and asked him also for Manoling's house.

Accused-appellant then stopped by the window of the Estanislao's house which was just adjacent to the house of Manoling. The place was lighted by a mercury lamp about twelve (12) meters from the house of Estanislao. As soon as accused-appellant saw Estanislao, he rolled up his sleeves, drew a gun from his waist, and fired at Estanislao, hitting him on the head.[3] Leonardo had a clear view of Estanislao sitting on a chair and watching TV when fired upon as he was only about ten (10) meters away from the shooter and the victim. Fearing for his life, Leonardo hid behind a chair.

Leonora Salo, Estanislao's wife, was washing dishes in the kitchen when she heard the gunshot. She rushed to the living room and saw her husband slumped on the floor. She looked out the window and saw accused-appellant Pedro Perreras alias "Pepot" holding a gun staring at her husband's body.[4] Upon seeing Leonora, Pedro fled with Boy trailing him some twenty (20) meters behind. Shocked and senseless, Leonora cradled her dying husband in her arms and shouted his name as if to will him back into consciousness. After Pedro and Boy left, Leonardo Salazar ran to the house of Saturnino Maramba, a barangay councilor, and reported to him, in between gasps, the shooting and narrated the details of what he had witnessed. Both then went to the house of SPO2 Dacanay for assistance.

Estanislao was rushed to the Villaflor Hospital for treatment but it was too late. He died at 5:30 the following morning, 22 July 1998.

Dr. Benjamin Bautista, Rural Health Physician of Dagupan City, conducted the autopsy on the cadaver of

Estanislao. It was in a state of rigor mortis, with "gunshot wound, POE, 2 cm., left, Parietal area, penetrating, perforating, gunpowder tattooing marking, less dense, collar abrasion, depress fracture skull." Internal findings showed "intercranial hemorrhage, moderate; skull depress fracture; penetrating and perforating brain tissue damage." Cause of death was "Hypovolemic shock, Hemorrhage, moderate, due to gunshot wound POE (L) parietal area, brain tissue damage."[5] Dr. Bautista explained in court that the victim was shot in the left side of the top portion of the head but there was no exit wound; the shot was fired at close range, from four (4) to six (6) feet, and from a low caliber pistol; and, from the position of the bullet wound, the victim could have been shot while seated.[6]

On 22 August 1998 accused-appellant was arrested while in hiding in Echague, Isabela. According to SPO4 Alfredo Flores, accused-appellant admitted to him that he killed Estanislao Salo and voluntarily signed the warrant of arrest[7] on the left margin thereof.[8] But, Boy Fernandez was nowhere to be found.

Accused-appellant however subsequently denied the charges against him. He claimed that he had been in Isabela since 11 July 1998 and returned to Dagupan only upon his arrest. He also denied that he admitted to SPO4 Flores that he murdered Estanislao Salo, claiming that did not know how to write and his captors forced him to affix his signature on the warrant. He also testified that he was mauled by Estanislao Salo's two (2) sons and nephew while he was detained in the Dagupan police station. Furthermore, he asserted that Boy Fernandez, his alleged companion during the murder, had been dead for three (3) years, and even presented a Death Certificate[9] of one Rodolfo Geminiano Fernandez who died on 23 May 1994.

On rebuttal, the prosecution presented two (2) other witnesses, Orlando and Pepito Capua, both residents of Bacayao Norte, to testify that they knew Boy Fernandez and that he was still alive. They further testified that the Rodolfo Geminiano Fernandez who died in 1994 was the father of Boy Fernandez.

Accused-appellant now maintains that the lower court committed a grievous error in lending weight to the testimony of prosecution witness Leonardo Salazar. He pointed out supposed "inconsistencies" in Salazar's testimony in an attempt to impugn his credibility. First, the ocular inspection of the area which revealed that the victim's house was east of the shed was inconsistent with Salazar's testimony that he was facing west when the incident transpired. Second, the location of the electric post which illuminated the vicinity was not twenty (20) meters in front of the house, as Salazar claimed, but on its southern direction 100 meters away. Third, it was impossible for him to have asked directions to the house of Manoling Pastoral because he personally knew Pastoral as well as the location of his house.

As regards the first perceived "inconsistency," accused-appellant argues -

> From the testimony of the said witness itself it was well established that he was at that shed near the electric post where the improvised basketball court was located, and the said shed was facing the three (3) meters concrete road. On this point alone it was already very clear that witness Leonardo Salazar, assuming arguendo to be present, could never see the house of the victim because he was then at the time facing the three (3) meters concrete road, hence, facing west but the house of the victim during the ocular inspection was found to be located in the eastern direction in relation to the said shed or electric post and improvised basketball court was located.

A close scrutiny of the records reveals that nowhere in Leonardo's testimony did he ever state that he was facing west when the shooting occurred. He only said that the waiting shed where he was standing before he went to breath some fresh air was facing the newly constructed concrete road. The map of the area drawn by the court researcher[10] reveals that this road was indeed to the west of the shed. However, Leonardo did not claim to have witnessed the shooting from there. He left that shed to go to the front of the victim's house for some fresh air. It

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was from there, and not from the shed, that he saw the killing. As the lower court correctly pointed out -

> It was counsel for the defense who was apparently confused when he predicated almost all his questions during the cross-examination of Leonardo Salazar on the place where the witness was refreshing himself when actually counsel for the defense wanted to refer to the waiting shed where the witness was conversing with the people around and where the accused asked him where the house of Manoling Pastoral is and if the latter was in his house. The place where the waiting shed is located is actually different from the place where the witness went to refresh himself near the house of the victim as borne out by the transcript of the testimony of the witness.[11]

We agree with the trial court and the Solicitor General that considering that accused-appellant had been in Isabela from 1975 to 1997, it would not be far-fetched that he lost his familiarity with the barangay so that it was not unlikely that he had to ask for directions to the house of Manoling Pastoral, or at least verify his recollection with someone more familiar with the place.

Also, we agree with the court a quo that the discrepancy as to the distance between the electric post and the victim's house is a minor inconsistency that cannot affect the credibility of the witness' testimony. As it is oft-repeated, inconsistencies in the testimonies of witnesses which refer only to minor details and collateral matters do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and the positive identification of the assailants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed. Nor are such inconsistencies, and even improbabilities, unusual for there is no person with perfect faculties or senses.[12]

At any rate, all doubts regarding the relative positions of the houses, electric lights and basketball court have been soundly put to rest, and aptly so, by the trial court -

> During the ocular inspection it was learned that there was a vacant space in front of the house of Salo as the area was not yet fenced at the time of the incident with a hollow block wall on the southwestern side of the vacant lot was a mercury lamp x x x which could very well light the house of Estanislao Salo, including that portion where a window existed through which Estanislao Salo was shot x x x x Although the electric post was not located immediately on the side of the road as it was inside the kitchen wall of a house under it, same was of a height sufficient enough to make the electric bulb attached to it to light the front of the house of Estanislao Salo without any obstruction and when the witness said that he went in front of the house of Salo he was within the vicinity of the said electric post, not on the waiting shed near which another electric post was located where the defense argued the witness was at the time of the incident. From any place in front of the house of Salo, anyone could see the place where the accused was supposed to be standing when Estanislao Salo was shot.[13]

It is a hornbook doctrine that findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons because of the trial court's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination.[14] In the same vein, questions regarding the locus criminis, the distances and positions of the landmarks, and the credibility of the witnesses relative thereto, are best left to the trial court, especially when it had conducted an ocular inspection. No amount of textual description, recitation of measurements, and diagrams could even approximate the actual subjection of the crime scene to the trial judge's acute senses.

Moreover, Leonardo Salazar's testimony was corroborated by Leonora Salo, the wife of the victim, and Dr. Benjamin Bautista, the examining physician. Leonora's testimony that she saw accused-appellant holding a gun and staring at her unconscious husband through the window confirms the gunman's identity. Dr. Bautista's findings that the victim was shot at close range with a small firearm while sitting down[15] are also consistent

with Leonardo's account.

In the face of the prosecution's mounting evidence, accused-appellant invokes alibi for his defense. But positive identification, if categorical and consistent, without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence not worthy of weight in law.[16] For alibi to prosper, it is not enough to prove that accused-appellant was somewhere else when the crime was committed but it must likewise be demonstrated that he was far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[17] The lower court took judicial notice of the fact that a trip from Isabela to Dagupan City takes a mere eight (8) to nine (9) hours and therefore it was not impossible for accused-appellant to have been in Dagupan City on the night in question and returned to Isabela immediately after. For this reason, the defense of alibi must fall.

In qualifying the crime to murder, the trial court correctly appreciated the circumstance of treachery.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[18] For treachery to be considered, two (2) elements must concur: (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and, (b) the means of execution were deliberately or consciously adopted.[19] In this case, the victim was in the comforts of his own home, enjoying a televised basketball game. He was shot in the head from the back, with the gunman even having all the time in the world to roll up his sleeves and take careful aim. The victim was unaware of the attempt on his life, and was not in the position to defend himself. Clearly, treachery was present in this killing.

In imposing the death penalty, the trial court ruled that the murder was aggravated by dwelling. We agree, but not to the imposition of the supreme penalty as shown hereunder.

Dwelling aggravates a felony where the crime was committed in the dwelling of the offended party if the latter has not given provocation or if the victim was killed inside his house.[20] Dwelling is considered aggravating primarily because of the sanctity of privacy the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[21] Although accused-appellant was outside of the house when he fired, the victim was inside his house. For the circumstance of dwelling to be considered, it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant might have devised means to perpetrate the assault from the outside.[22]

However, the death penalty cannot be imposed on accused-appellant in light of our recent rulings in People v. Arrojado[23] and People v. Gano[24] where Secs. 8 and 9 of The Revised Rules on Criminal Procedure[25] were given retroactive application where favorable to the accused. The Rules now require that every complaint or information state not only the qualifying but also the aggravating circumstances, otherwise the same cannot be properly appreciated. Since dwelling was not alleged in the Information, it cannot be considered to raise the penalty to death. Consequently, there being no more modifying circumstances to be appreciated, the penalty for this murder is reclusion perpetua, pursuant to Art. 63 in relation to Art. 248 of The Revised Penal Code, as amended by RA 7659.

Of the amount of P91,803.59 awarded for actual damages, only P61,813.15 may be granted as only so much for medical and burial expenses are supported by the evidence on record.[26] Actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the

victim.[27]

The heirs of the deceased may recover damages for loss of earning capacity. Although the prosecution did not present documentary evidence to support this claim, testimonial evidence is sufficient to establish a basis for which the court can make a fair and reasonable estimate of damages for loss of earning capacity,[28] and the unrebutted testimony of Leonora Salo is sufficient basis for the award. She testified that the victim was fifty (50) years old at the time of his death and earned a basic salary of P130.00 a day but including tips as waiter in a restaurant he was earning a total average of P9,000.00 per month. Under the American Expectancy Table of Mortality adopted by this Court in several cases,[29] loss of earning capacity is computed according to the following formula:

Net Earning Capacity (X)

= Life Expectancy x Gross

Annual Income - Living Expenses

(50% of Gross Annual Income)

where life expectancy

= 2/3 x (80 - [age of deceased]);

and

Gross Annual Income

= Monthly Earnings x number of months (12)

Therefore,

X = 2/3 (80-50) x [(P9,000.00 x 12) - [P9,000.00 x 12) 50%]

X = 2/3 (30) x [P108,000.00 - P54,000.00]

X = 20 x P54,000.00

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X = P1,080,000.00

The award of P75,000.00 as civil indemnity is reduced to P50,000.00 since murder was not qualified by any circumstance under which the death penalty is authorized. The testimony of Leonora that she suffered sleepless nights and mental anxiety as a result of her husband's murder sufficiently justifies moral damages,[30] although the award of P100,000.00 may be considered excessive hence must be lowered to P50,000.00 to conform with current jurisprudence.[31]

WHEREFORE, the Decision of the Regional Trial Court in Crim. Case No. 98-02303-D finding accused-appellant PEDRO PERRERAS alias "Pepot" guilty of murder, imposing on him the death penalty and ordering him to pay the heirs of ESTANISLAO SALO P75,000.00 as civil indemnity, P91,803.59 in actual and compensatory damages, P1,728,000.00 in lost earnings, and P100,000.00 in moral damages is MODIFIED. Accused-appellant PEDRO PERRERAS is found guilty of murder and sentenced instead to reclusion perpetua and to pay the heirs of ESTANISLAO SALO P50,000.00 as civil indemnity, P61,813.15 as actual damages, P1,080,000.00 in lost earnings and P50,000.00 as moral damages. No costs.

SO ORDERED.

Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Gonzaga-Reyes, Ynares-Santiago, and De Leon, JJ., concur.
Davide, Jr., C.J., Melo, Panganiban, Buena, and Sandoval-Gutierrez, JJ., abroad, on official business.

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[1] Decision penned by Judge Luis M. Fontanilla, RTC-Br. 42, Dagupan City, prom. 4 June 1999.

[2] TSN, 12 October 1998, p. 19.

[3] Id., p. 23.

[4] TSN, 14 December 1998, p. 20.

[5] Exh. "A," Original Records, p. 73.

[6] TSN, 12 October 1998, p. 15.

[7] Exh. "C," Original Records, p. 44.

[8] Exh. "C-1," id.

[9] Exh. 3, id.

[10] Exh. 1, Original Records, p. 124.

[11] Rollo, p. 27.

[12] People v. Mercado, G.R. No. 116239, 29 November 2000.

[13] Rollo, pp. 26-27.

[14] People v. Gemoya, G.R. No. 132633, 4 October 2000.

[15] TSN, 10 December 1998, p. 15.

[16] People v. Panado, G.R. No. 133439, 26 December 2000.

[17] Ibid.

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[18] People v. Amazan, G.R. Nos. 136251, 138606-7, 16 January 2001; People v. Bato, G.R. No. 127843, 15 December 2000.

[19] Ibid.

[20] People v. Paraiso, G.R. No. 127840, 29 November 1999, 319 SCRA 422.

[21] Ibid.

[22] People v. Dacibar, G.R. No. 111286, 17 February 2000, 325 SCRA 725.

[23] G.R. No. 130492, 31 January 2001.

[24] G.R. No. 134373, 28 February 2001.

[25] Sec. 8. Designation of the Offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[26] Exhs. "E"-"E-4," "F"-"F-2," and "H."

[27] See People v. Galo, G.R. No. 132025, 16 January 2001.

[28] People v. Bangcado, G.R. No. 132330, 28 November 2000.

[29] People v. Mendoza, G.R. No. 134004, 15 December 2000; People v. Langit, G.R. Nos. 134757-58, 4 August 2000.

[30] TSN, 14 December 1998, p. 15.

[31] People v. Amazan, see Note 18.

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