

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENNY ACOSTA AND RENNY BOY ACOSTA, ACCUSED.

G.R. No. 140386. November 29, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated August 19, 1999, of the Regional Trial Court, Branch 44, Dumaguete City, Negros Oriental, insofar as it finds one of the accused, Benny Acosta, guilty of murder and sentences him to suffer the penalty of reclusion perpetua and to pay the amount of P50,000.00 as civil indemnity for the death of Norton Baguio.

The facts are as follows:

On April 14, 1993, accused-appellant Benny Acosta was charged, together with his son Renny Boy Acosta, with murder in an information which alleged -

That on or about past midnight of March 14, 1993, at sitio Tuway, barangay P. Zamora, Guihulngan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with treachery and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one Norton Baguio, thereby causing stab wounds on the back of said victim who instantaneously died as a result thereof, to the damage and prejudice of the heirs of said Norton Baguio.[2]

When arraigned on November 3, 1993, both accused pleaded not guilty, whereupon they were tried.[3]

The prosecution presented six witnesses, to wit, Dr. Fe L. Mercado, SPO2 Cecilio Nilles, Hansel Cañete, Joy Boganutan,[4] Leonilo Baguio, and Adelia Patricio. The gist of their testimonies is as follows:

At about 9 o'clock in the evening of March 13, 1993, the victim Norton Baguio, together with Hansel Cañete, Leonardo Cabunalis,[5] and Joy Boganutan, attended a dance in celebration of the town fiesta at Sitio Tuway, Guihulngan, Negros Oriental. The dance was held in an open space, lighted by two petromax lamps installed opposite each other.[6]

At about past 12 o'clock midnight of March 14, 1993, the four decided to go home. Somewhere on the way, Norton Baguio stopped to urinate at the back of a store, while his companions waited for him. As Baguio was thus urinating, accused-appellant Benny Acosta suddenly attacked and stabbed him from behind. When Baguio fell down and rolled facing downward, accused Renny Boy Acosta rushed towards the victim and took his turn in stabbing him.

Baguio was helped by his companions. Although he died shortly thereafter, Baguio was able to tell his companions who his assailant was. He pointed to accused-appellant Benny Acosta.[7]

The postmortem examination on the body of the victim shows that he sustained the following wounds:

- Wound, stabbed, left back, at the level of the posterior axillary line, and at the level of the tip of the scapula, 1 inch long, by - inch width by 5 - inch deep, directed to midline wound, is lying over the scapular bone;
- Wound, stabbed, back left lumbar area, 1 - inch long by - inch width by 6 inches deep, directed anteriorly. Wound is L shaped. White T-shirt is shown bloodied, with the holes, which are much bigger than the wounds.

CAUSE OF DEATH: Internal Hemorrhage[8]

Dr. Fe L. Mercado, who conducted the postmortem examination, testified that a sharp pointed instrument, such as a hunting knife, could have been used in inflicting the two wounds suffered by the victim, both of which caused internal hemorrhage which proved to be fatal. She testified that the direction of the first wound on the left upper back was downward to the midline and that it was possible that the victim was standing when he was stabbed. He further testified that the second wound on the left lumbar area was from the back anteriorly to the front and it was probable that the victim may either be standing or sitting down when the wound was inflicted.[9]

SPO2 Cecilio Nilles, custodian of the police force, testified that on March 15, 1993, a long bladed knife with a scabbard was turned over to him for safekeeping. He said that on the night of March 14, 1993, accused Renny Boy Acosta surrendered a hunting knife.[10]

Adelia Patricio, aunt of the deceased victim, testified on the expenses incurred by the family of the victim as a result of his death. She said that she spent P6,000.00 for the embalming and coffin, P2,500.00 for the snacks and food during the wake, and other miscellaneous expenses, totaling P13,300.00. In addition, she testified, she spent P300.00 for the filing of the case, attorney's fees, fares, and food, all totaling P13,850.00. All in all, she spent about P30,000.00. However, she admitted on cross-examination that she had no receipts for the amount she spent for the vigil, burial, and other related expenses, save for the attorney's fees which she did not present.[11]

On the other hand, the defense presented six witnesses, namely, SPO4 Arnold Perez,[12] Joel Sayon, Dr. Rogelio Regalado, Chief Inspector Constantino Baguio, accused Renny Boy Acosta, and accused-appellant Benny Acosta.

Accused-appellant's defense was alibi. He claimed that from 5 o'clock in the afternoon of March 13, 1993 until around 1 o'clock in the morning of the next day, March 14, 1993, he was out on the sea fishing. After fishing, he went to the house of a certain Romulo Perez, sold his catch, and saw a betamax film. He afterward went home and rested. Accused-appellant testified that he did not know that he had been implicated in the killing of Norton Baguio until he was awakened by the call of several policemen while he was asleep at home in the morning of March 14, 1993.

On cross-examination, accused-appellant admitted that his house was near the seashore and that the dance hall, where the stabbing of the victim took place, was only a 10 minute walk from the seashore. In fact, he said the music from the dance hall could be heard from the seashore. However, accused-appellant reiterated that he was not in the dance hall at the time of the stabbing and denied that the knife and scabbard belonged to him.[13]

SPO4 Arnold Perez, operations officer of the Guihulngan Police Station, testified that at about 5 o'clock in the afternoon of March 13, 1993, he met accused-appellant while the latter was on his way to the sea. Accused-appellant came back from the sea at past 12 o'clock midnight to sell his catch. Perez said he bought fish from accused-appellant and that the latter stayed in his house for a while in order to watch a betamax show. He claimed that later in the morning of March 14, 1993, he learned that accused-appellant had been arrested and detained, although he found out that it was accused Renny Boy Acosta who had stabbed the victim. Perez said he examined the knife and scabbard used in the killing and saw blood inside the scabbard. He testified that while his station conducted an investigation on accused Renny Boy Acosta, it was the 333[rd] PC Company which investigated accused-appellant Benny Acosta.[14]

Accused Renny Boy Acosta testified that in the evening of March 13, 1993, he met Joel Sayon in the dance hall. They both agreed to go home together at around 12 o'clock midnight. On the way home, Sayon asked Renny Boy for a cigarette. As Renny Boy did not have any, he went to buy some cigarettes. Just then, Sayon saw Norton armed with an ice pick about to strike Renny Boy. Sayon shouted, "Watch [out] Boy, Norton will stab you." Renny Boy jumped, but Sayon was hit. Norton Baguio then turned to Renny Boy Acosta and was about to hit him with an ice pick. Renny Boy, however, was able to parry the blow and draw his hunting knife which he used to stab the victim. Renny Boy admitted that he stabbed the victim twice, on the right side of the stomach and on another spot which he could not remember. After the incident, Renny Boy ran to his house and slept. He surrendered to SPO4 Perez on March 15, 1993 and was incarcerated in the municipal hall jail.[15]

The testimony of accused Renny Boy Acosta was corroborated by the testimony of Joel Sayon.[16]

The trial court gave credence to the testimonies of the prosecution eyewitnesses, Hansel Cañete and Joy Boganutan, even as it rejected the defense of alibi of accused-appellant Benny Acosta and the claim of self-defense of the other accused, Renny Boy Acosta.[17] The mitigating circumstance of minority was appreciated in favor of accused Renny Boy Acosta, considering that he was under 18 years of age at the time of the commission of the crime on March 14, 1993, it appearing that he was born on September 5, 1975.[18]

On August 19, 1999, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, accused BENNY ACOSTA and RENNY BOY ACOSTA are hereby found GUILTY beyond reasonable doubt of the crime of murder. Accordingly, the Court hereby imposes upon the accused BENNY ACOSTA the penalty of reclusion perpetua. Accused RENNY BOY ACOSTA shall suffer an indeterminate prison term of SIX (6) YEARS of prision correccional, as minimum, to TWELVE (12) YEARS, FIVE (5) MONTHS AND TEN (10) DAYS of reclusion temporal, as maximum. Both accused shall indemnify the heirs of the victim in the sum of FIFTY THOUSAND PESOS (PHP 50,000.00), and to pay the costs.

In the service of their sentence, both accused shall be credited in full of their preventive imprisonment.

Let the persons of both accused be immediately transmitted to the National Penitentiary (sic), Muntinlupa City, Metro Manila.

SO ORDERED.[19]

Only Benny Acosta has appealed.[20] He contends that:

- THE TRIAL COURT ERRED IN NOT APPRECIATING THE ALIBI ASSERTED BY ACCUSED BENNY ACOSTA IN THE FACE OF HIS UNRELIABLE IDENTIFICATION AND THE WEAK, IMPROBABLE, INCONSISTENT AND UNCERTAIN TESTIMONIES OF THE EYEWITNESSES OF THE PROSECUTION.
- THE TRIAL COURT ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE SELF-DEFENSE AND DEFENSE OF STRANGER PROFESSED BY ACCUSED-APPELLANT (sic) RENNY BOY ACOSTA.[21]

We find accused-appellant's contentions to be without merit.

First. Accused-appellant contends that the trial court erred in giving credence to the testimonies of the two prosecution witnesses, Boganutan and Cañete. Accused-appellant argues that the testimonies of Boganutan and Cañete are inconsistent for whereas Boganutan testified that accused-appellant passed by the group of Cañete, Cabunalis, and Boganutan on his way to attacking the victim, Cañete declared otherwise.

This contention has no merit. Cañete and Boganutan both testified that accused-appellant was indeed in the dance hall and that he was one of those who killed the victim by stabbing the latter from behind. Whether or not accused-appellant passed by their group prior to the attack refers to a mere collateral matter which in fact strengthens, rather than negates, their credibility as witnesses. Variations in the declarations of witnesses in respect of collateral or incidental matters do not impair the weight of their testimonies, taken in their entirety, to the prominent facts, nor per se preclude the establishment of the crime and the positive identification of the malefactor.[22] Further, the claim of accused-appellant that the two eyewitnesses were far from the place where the incident took place and that they were seated at a lighted place in the dance hall while the victim was urinating at a dark place are nothing but pure conjectures. Boganutan and Cañete categorically stated that they were only five strides, more or less, or about six meters, away from the victim and that the place was well lighted at the time of the incident.[23] They testified that they saw accused-appellant at the scene of the crime and that he and his son stabbed the victim from behind.

Accused-appellant likewise insists that there was only one assailant based on the testimony of Dr. Fe L. Mercado that the two wounds inflicted upon the victim were caused by only one instrument. He misconstrues, however, the testimony of Dr. Mercado. Dr. Mercado testified:

Q

But anyway Doctora, in the first and second wounds, is it possible that the assailant would use the same kind of weapon?

A

I could not determine.

Q

But the appearance of the wound, could you not determine whether the same kind of weapon was used or you have difficulty in determining it?

A

It is difficult for me to determine, but it is possible.[24]

Thus, what Dr. Mercado said was that it was difficult to determine whether one and the same kind of weapon was used to inflict the two fatal wounds. Such statement does not refer to the number of assailants of the victim nor to the number of weapons used against him.

Second. Prosecution eyewitnesses Boganutan and Cañete pointed to accused-appellant and his son and co-accused Renny Boy Acosta as the perpetrators of the crime. The defense, however, claims that Renny Boy Acosta alone stabbed the victim and only in self-defense. Accused-appellant insists on his alibi that he was out on the sea fishing at the time of the incident. For alibi to prosper, however, it is not enough for the accused to prove that he was elsewhere when the crime was committed, but he must also show that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[25] As an element of a credible alibi, physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[26]

In the case at bar, although accused-appellant claims that he was out in the sea fishing at the time of the commission of the crime, he has not shown that it was physically impossible for him to have been at the dance hall at the time Norton Baguio was stabbed. Accused-appellant could have very well been in the dance hall at around 12 o'clock midnight when the incident happened as he himself admitted that it was merely a 10 minute

walk from the seashore, which was near his house, to the dance hall.[27] Thus, accused-appellant could have easily left his house at 12 o'clock, proceeded to the dance hall, and then gone fishing without much difficulty and within a short span of time. Such possibility is further bolstered by the testimony of SPO4 Perez, a defense witness, when he testified that accused-appellant came back at past 12 o'clock midnight or at around 1 o'clock in the morning of March 14, 1993.[28] Accused-appellant could thus have come from the dance hall before he went to Perez's house. We have time and again held that alibi will not be given credence when there was even the least chance for the accused to be present at the crime scene.[29]

Third. As already stated, only accused-appellant Benny Acosta appealed. The other accused, his son Renny Boy Acosta, did not.[30] Hence, accused-appellant erred in including accused Renny Boy Acosta as an appellant in this case. Unfortunately, the Office of the Solicitor General, possibly through oversight, perpetuated this error.

Rule 122, §11(a) of the Rules of Criminal Procedure clearly states that an appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment is favorable and applicable to the latter. We have likewise held that an accused who did not appeal from the judgment against him has no right to seek relief since the judgment is final with respect to him.[31] Therefore, the finding of the trial court that accused Renny Boy Acosta is guilty of murder and the penalty of an indeterminate prison term of six (6) years of prison correccional, as minimum, to twelve (12) years, five (5) months and ten (10) days of reclusion temporal, as maximum, imposed on him is now final and can no longer be reviewed.

In any event, even if a decision beneficial to accused Renny Boy Acosta is rendered, this will not benefit accused-appellant. What is more, the trial court correctly rejected the plea of self-defense of accused Renny Boy Acosta. In a plea of self-defense, the burden shifts to the accused to prove by clear and convincing evidence the elements of the plea before he can avail himself of this justifying circumstance.[32] He must thus prove that the following requisites are present: (1) unlawful aggression, (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression, and (3) lack of sufficient provocation on the part of the person defending himself.[33]

In this case, accused Renny Boy Acosta was the aggressor. On cross-examination, he admitted that he stabbed the victim despite the fact the latter was already lying on the ground. Thus,

Q

The thrust of the knife of Norton Baguio was the first thrust and you parried it, is that correct?

A

Yes, that was the first.

Q

It was only the first thrust because you stabbed him right away, is that correct?

A

Yes.

Q

Now, at the time when you said you stabbed Norton Baguio, Norton Baguio already fell down?

A

Yes.

Q

And you stabbed him again?

A

Yes.[34]

Granting that the victim gave the initial unlawful aggression, it had certainly ceased from the moment he fell to the ground. At that point, accused Renny Boy became the aggressor.[35] When the unlawful aggression has ceased to exist, the one making the defense has no right to kill or injure the former aggressor.[36]

The claim of self-defense is further belied by the fact that the victim no longer intended to stab Renny Boy Acosta after the first attempt. As Renny Boy admitted:

Q

When Norton Baguio fell to the ground, was he still holding the ice pick?

A

Yes. . . .

Q

When Norton Baguio fell down holding that twelve inches ice-pick, did he still try to thrust you?

A

No more.[37]

More importantly, the physical evidence contradicts accused Renny Boy Acosta's claim of self-defense. He alleged that he stabbed the victim twice, one in the stomach and in another part of the body which he could no longer remember. The result of the postmortem examination, however, reveals that the victim had no wound in the stomach. Both wounds were located at the victim's back.

The contention that Renny Boy Acosta acted in defense of a stranger must likewise be rejected. For this defense to be availed of, the following requisites must be present: (1) unlawful aggression, (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression, and (3) the person defending the stranger be not induced by revenge, resentment, or other evil motive.[38] Renny Boy admitted that everytime he went to the dance, he always brought with him his hunting knife, for the purpose of defending himself because the victim was a known trouble-maker in their place. He thus betrayed his animosity toward the victim. He said:

Q

And this Norton Baguio who is your classmate, you have known him very well?

A

Yes.

Q

You know him to be the toughest in your place?

A

Yes, he is a tough guy.

Q

And he used to be a troublesome in your place?

A

Yes.

Q

That's why everytime you go to the dance you bring hunting knife?

A

Yes.[39]

Fourth. We affirm the trial court's appreciation of the qualifying circumstance of treachery. Treachery exists when the offender employs means, methods, or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take.[40] Norton Baguio was urinating with his back towards his assailants when suddenly and unexpectedly he was twice stabbed. There is no doubt that the victim in this case could not have repelled the attack or offered any defense of his person.

The trial court correctly awarded P50,000.00 as civil indemnity to the heirs of Norton Baguio in accordance with our recent rulings.[41] We also agree with the trial court that the heirs are not entitled to actual damages for expenses incurred during the victim's wake and burial. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof.[42] In the case at bar, Adelia Patricio, the aunt of the victim, who shouldered the expenses for wake and the burial of the victim, failed to submit receipts to show the amount of such expenses.[43] Hence, there being no receipts presented as required by Art. 2199 of the Civil Code,[44] this Court cannot grant the heirs actual damages.

In accordance with our rulings, however, an award in the amount of P50,000.00 as moral damages should be granted in this case to compensate them for injuries to their feelings.[45]

WHEREFORE, the decision of the Regional Trial Court, Branch 44, Dumaguete City, Negros Oriental, finding accused-appellant Benny Acosta guilty of murder and imposing upon him the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is ordered to pay to the heirs of Norton Baguio the amount of P50,000.00 as moral damages, in addition to the amount of P50,000.00 awarded by the trial court as civil indemnity for the death of Norton Baguio.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and De Leon, Jr., JJ., concur.
Buena, J., abroad on official business.

[1] Per Judge Alvin L. Tan.

[2] Records, p.1.

[3] Id., p. 56.

[4] Also referred to in the records as Joy Boganotan.

- [5] Also spelled Leonardo Gabunalis and Leonardo Cabunales in the records.
- [6] TSN (Hansel Cañete), pp. 17, 22, 24, Sept. 2, 1994.
- [7] Id., pp. 8-9, 13, 15; TSN (Joy Boganutan), pp. 5-6, 12, Oct. 13, 1994.
- [8] Exh. A; Records, p. 10.
- [9] TSN (Dr. Fe L. Mercado), pp. 11-12, May 4, 1995.
- [10] TSN (SPO2 Cecilio Nilles), pp. 7-11, 13, July 14, 1994.
- [11] TSN (Adelia Patricio), pp. 10-11, July 14, 1994.
- [12] Also referred to as Romulo Perez in the Records.
- [13] TSN (Benny Acosta), pp. 3, 6-8, 15, 21-26, Oct. 23, 1995.
- [14] TSN (SPO4 Arnold Perez), pp. 5-8, 18, Dec. 22, 1995.
- [15] TSN (Renny Boy Acosta), pp. 9-10, 15-29, Sep. 12, 1996.
- [16] TSN (Joel Sayon), pp. 6-10, Feb. 22, 1996.
- [17] Rollo, pp. 38-40; Records, pp. 304-306.
- [18] Id., p. 41; id., p. 308.
- [19] Decision, p. 14; Records, p. 308.
- [20] Rollo, p. 43; Id., p. 309.
- [21] Appellant's Brief, pp. 6 & 12; Rollo, pp. 65 & 71.
- [22] *People v. Mahinay*, 304 SCRA 767 (1999).
- [23] TSN (Hansel Cañete), pp. 10, 16, Sept. 2, 1994; TSN (Joy Boganutan), pp. 8-9, Oct. 13, 1994.
- [24] TSN (Dr. Fe L. Mercado), p. 14, Jan. 13, 1994.
- [25] *People v. Lachica*, 316 SCRA 443 (1999).
- [26] *People v. De Labajan*, 317 SCRA 566 (1999).
- [27] TSN (Benny Acosta), p. 21, Oct. 23, 1995.
- [28] TSN (SPO4 Arnold Perez), pp. 5-7, Dec. 22, 1995.
- [29] *People v. Santiago*, 319 SCRA 644 (1999); *People v. Bitoon, Sr.*, 309 SCRA 209 (1999).
- [30] Rollo, p. 43; Records, p. 309.
- [31] *US v. Candelaria*, 2 Phil. 104, 106 (1903).
- [32] *People v. Canete*, 287 SCRA 490 (1998); *People v. Bitoon, Sr.*, 309 SCRA 217 (1999); *People v. Amazan*, G.R. Nos. 136251, 138606, 138607, Jan. 16, 2001.
- [33] *People v. More*, 312 SCRA 538 (1999); *People v. Vermudez*, 302 SCRA 276 (1999).
- [34] TSN (Renny Boy Acosta), p. 13, Dec. 9, 1998.

[35] *People v. Ganzagan, Jr.*, 247 SCRA 764 (1995).

[36] *People v. Alconga*, 78 Phil. 366 (1947); *People v. Cawaling*, 293 SCRA 267 (1998); *People v. Tumanon*, G.R. No. 135066, Feb. 15, 2001.

[37] TSN (Renny Boy Acosta), p. 20, Dec. 9, 1998.

[38] *People v. Tobias*, 267 SCRA 229 (1997).

[39] TSN (Renny Boy Acosta), p. 7, Dec. 9, 1998.

[40] *People v. Gungon*, 287 SCRA 618 (1998).

[41] *People v. Borreros*, 306 SCRA 680 (1999); *People v. Samolde*, 336 SCRA 632 (2000); *People v. dela Cruz*, G.R. No. 128362, Jan. 16, 2001.

[42] *People v. Suelto*, 325 SCRA 41 (2000); *People v. Samolde*, 336 SCRA 632 (2000).

[43] TSN (Adelia Patricio), p. 11, Dec. 12, 1994.

[44] *People v. Vital*, G. R. No. 130785, Sept. 29, 2000; *People v. Ronas*, G.R. Nos. 28088 & 146639, Jan. 31, 2001

[45] *People v. Cantos, Sr.*, 305 SCRA 786 (1999); *People v. Sullano*, 331 SCRA 649 (2000); *People v. Garcia*, G. R. No. 117406, Jan. 16, 2001.

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