

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH BARTOLO ALIAS “BOBONG”, GERARDO BARTOLO, JR., ALIAS “GERRY”, “NENE” (ACQUITTED), AND NELSON ARROYO ALIAS “BOY TANGKAD” ...

G.R. No. 140639. September 27, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

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Accused-appellant Joseph Bartolo, appeals from the decision[1] of the Regional Trial Court of Roxas City, Branch 19, convicting him of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased the amounts of P120,000.00 as civil indemnity, P150,000.00 as moral damages and P30,000.00 as funeral and hospitalization expenses.

The Information filed against accused-appellant and his two co-accused, reads:

That on or about the 19th day of June 1997, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, thereby JOSEPH BARTOLO armed with a knife and with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one TEODORICO B. SOLANO, JR. on the body, to wit:

“Penetrating stab wound, perforating Liver.”

While NELSON ARROYO was holding the victim on the shoulder and GERARDO BARTOLO JR., was shielding from the other customers the unlawful act and thus concerted overt act showed unified purpose and thus qualifies the crime to MURDER through treachery, conspiracy and evident premeditation thereby inflicting upon him a serious and mortal wound which was the direct and immediate cause of his death.

That because of the death of the said TEODORICO B. SOLANO, JR., his heirs suffered actual and moral damages that may be awarded by the Honorable Court under the Civil Code of the Philippines.

CONTRARY TO LAW.[2]

Upon arraignment, all the three accused pleaded not guilty.[3]

The pertinent facts established by the prosecution are: Accused-appellant Joseph Bartolo was known to others as well as to the victim as “Gerry/Jerry Bartolo.”[4] On the night of June 19, 1997, the victim, a public school teacher, was having a drinking spree with his friends at the View Deck Inn Ihaw-Ihaw Restaurant in Roxas City. Likewise inside said restaurant was Ricardo Sereneo who was looking for a certain Boy Pastrana. At 8:30 p.m., Sereneo spotted accused-appellant leaning on the gate of the restaurant and holding a knife beside his left leg. Sereneo easily recognized accused-appellant because he had known him for at least 4 years prior to the incident. At around such time, the victim was talking to accused Nelson Arroyo. When the victim was about to return to his

table, accused-appellant ran towards him and stabbed him on the chest. Thereafter, accused-appellant hurriedly left the restaurant. The incident was witnessed by Sereneo for he was only about 5 meters away from the victim.[5]

Meanwhile, Jaime Panaguiton was also in the same restaurant that night to meet Boy Pastrana. After some time, he noticed that the victim was wounded and then he saw a man running out of the restaurant. He chased him but he failed to recognize and catch him.[6]

Spouses Lourdes and Jaime San Agustin, owners of the restaurant, brought the victim to the hospital. The victim could hardly breathe but he was able to tell Lourdes that, “Auntie, kon mapatay ako, ang nagbuno sa akon si Gerry Bartolo” (“Auntie, if I die, the one who stabbed me was Gerry Bartolo”).[7]

At the hospital, the victim died of hemorrhagic shock and blood loss due to a six-inch-deep stab wound that perforated the liver.[8]

Accused Nelson Arroyo, on the other hand, denied the accusation against him and pointed to accused-appellant Joseph Bartolo as the culprit. He testified that on the night of June 19, 1997, he and accused-appellant, who was his nephew, were at the View Deck Inn Ihaw-Ihaw Restaurant. Accused Gerardo Bartolo, Jr., was not with them. He observed that the victim was also inside the restaurant and occupying a table 4 arms length away behind them. When accused-appellant went out of the restaurant, the victim asked Nelson to join him. As the latter was about to get up, accused-appellant attacked the victim and stabbed him on the chest. Nelson was shocked because he was not aware of any animosity between the victim and accused-appellant, who were both close to him. On June 24, 1997, he executed an affidavit[9] stating that he did not see the person who stabbed the victim and that accused-appellant left the restaurant 15 minutes before the stabbing incident. On June 30, 1997, however, he executed another affidavit[10] stating that it was in fact accused-appellant who stabbed the victim. He explained that he did not tell the police that it was accused-appellant who killed the victim because he was protecting him, and that he was forced by the father of accused-appellant to execute the first affidavit. Bothered by his conscience, he finally told the truth and executed the second affidavit implicating accused-appellant in the killing of the victim.[11]

Accused-appellant interposed the defenses of denial and alibi. He testified that he has only one nick name: “Bong”. At around 7:00 p.m. of June 19, 1997, he and accused Arroyo were at the View Deck Inn Ihaw-Ihaw Restaurant in Roxas City. He noticed that the victim was also inside the restaurant. After a while, Arroyo’s wife arrived furious, so he left them and went home. Later that night, he was roused from sleep and arrested by the police officers.[12]

Accused Gerardo Bartolo, Jr., likewise testified that on the night of the stabbing incident, he and accused-appellant were sleeping in their house.[13]

Roberto Oquendo stated that he had known the Bartolo brothers since July 19, 1997, when he started working as a waiter at the View Deck Inn Ihaw-Ihaw Restaurant. In the evening of the same date, accused-appellant and accused Nelson Arroyo were inside the restaurant. After a while, accused-appellant left. While he was cooking barbecue, he heard a commotion. He turned and saw the victim who was wounded. Then, he saw a man running out of the restaurant. He surmised that the man was the assailant, and he could not have been accused-appellant because the latter was not there when the victim was stabbed.[14]

Gerardo Bartolo, Sr., father of accused-appellant, claimed that on the night of June 19, 1997, he and his wife were awakened while sleeping inside the barangay outpost. Upon learning that somebody was stabbed, he proceeded to the View Deck Inn Ihaw-Ihaw Restaurant and learned that Teodorico Solano, Jr. was stabbed by “Gerry Bartolo.”

He went home and found all his children inside the house.[15]

Accused Nelson Arroyo died of bronchial asthma during the pendency of the case and the indictment against him was dismissed.[16] On March 30, 1999, the trial court rendered the assailed judgment, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court finds and declares accused Joseph Bartolo, alias “Bongbong”, GUILTY beyond reasonable doubt of the crime of murder, as defined and punished under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to imprisonment of reclusion perpetua, together with its accessory penalties, and to pay the heirs of the deceased Teodorico Solano, Jr., P120,000.00 as civil indemnity for his death, P150,000.00 for moral damages, and P30,000.00 for funeral and hospitalization expenses.

In the service of his sentence consisting of deprivation of liberty, this accused being a detention prisoner, who does not otherwise appear to be disqualified, shall be credited with the full time of his confinement under preventive imprisonment, provided he voluntarily agrees in writing to abide by the same disciplinary rules imposed on convicted prisoners, pursuant to Article 29 of the Revised Penal Code.

For lack of evidence, this Court finds and declares accused Gerardo Bartolo, Jr., alias “Nene”, INNOCENT and hereby acquits him from the charge of murder. His immediate release from custody is hereby ordered.

SO ORDERED.[17]

Hence, the instant appeal raising the following errors allegedly committed by the trial court:

I

IN NOT BELIEVING THE TESTIMONY OF THE ACCUSED-APPELLANT, AS CORROBORATED BY HIS WITNESSES; HIS DEFENSE OF ALIBI; AND IN DISREGARDING THE PRINCIPLE THAT IN CRIMINAL CASES THE GUILT OF THE ACCUSED MUST BE PROVED BEYOND A REASONABLE DOUBT BEFORE A CONVICTION CAN BE HAD.

II

IN RELYING HEAVILY ON THE TESTIMONY OF NELSON ARROYO ALIAS “BOY TANGKAD” AND RICARDO SERENEO.[18]

The Court finds no merit in the appeal. It must be stressed that accused-appellant’s conviction is based on the positive identification by two witnesses and the dying declaration of the victim. We see no reason to doubt his positive identification by prosecution witness Ricardo Sereneo who categorically declared that he saw accused-appellant stab the victim on the chest. Sereneo could not have been mistaken in his identification considering that he was familiar with accused-appellant, who was only about 5 meters away from him when the stabbing incident occurred. Besides, accused-appellant failed to prove any improper motive on the part of Sereneo to falsely impute to him a crime as grave as murder. Hence, his testimony is entitled to full faith and credence.[19]

The positive identification by Sereneo was further bolstered by the testimony of accused Nelson Arroyo, who also pointed to accused-appellant as the culprit. The inconsistency in the June 24, 1997 and June 30, 1997 affidavits executed by Arroyo was adequately explained by him under rigorous cross-examination. He testified that he told the police officers that he did not see the person who stabbed the victim because he was protecting accused-appellant who is his nephew. He made the same declaration in his affidavit dated June 24, 1997 because the father of accused-appellant forced him to do so. His conscience, however, bothered him so he finally told the truth on June 30, 1997 when he executed another affidavit stating that he witnessed the stabbing incident and that

it was accused-appellant who stabbed the victim.

The guilt of appellant was further established by the victim's ante-mortem statement. The requisites for the admissibility of a dying declaration are: (1) the death is imminent and the declarant is conscious of that fact; (2) the declaration refers to the cause and surrounding circumstances of such death; (3) the declaration relates to facts which the victim is competent to testify; (4) the declarant thereafter dies; and (5) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.[20]

In the case at bar, all the above requisites are present. The victim's statement that, "Auntie, kon mapatay ako, ang nagbuno sa akon si Gerry Bartolo" ("Auntie, if I die, the one who stabbed me was Gerry Bartolo"),[21] while desperately trying to breathe, certainly shows that he was aware of his impending death. Had the victim survived he would have been competent to testify in court, as there is no evidence to the contrary. Finally, the dying declaration was in fact offered in the instant criminal prosecution in which the declarant was the victim.

Then too, the prosecution was able to prove that accused-appellant was known to the victim and to others as "Gerry/Jerry Bartolo," precluding any possibility that the person referred to by the victim in his ante mortem statement was Gerry Bartolo, Sr., or accused Gerry Bartolo, Jr., who were not present at the restaurant at the time the victim was stabbed.

At any rate, the issues posed by accused-appellant hinge on the credibility of the prosecution witnesses. The Court has consistently held that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by a trial court because of its unique opportunity to observe the witnesses firsthand; and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted. Since appellate courts have access only to inanimate transcripts of stenographic notes of the testimonies of the witnesses during the trial and to the various documentary evidence adduced by both parties, they must rely on the assessment of the trial court regarding the credibility of the witnesses.[22] In the instant case, the Court sees no reason to depart from the findings of the trial court.

The alibi and denial raised by accused-appellant cannot prevail over the positive identification of credible prosecution witnesses[23] and the ante mortem statement of the victim.[24] Moreover, accused-appellant failed to establish the requisite physical impossibility in order that alibi may prosper as a defense.[25] The locus criminis and the house where the victim was allegedly sleeping when the crime was perpetrated are located within the same barangay. Thus, it was not physically impossible for accused-appellant to be at the scene of the crime at the time the offense was committed.

The Court correctly disregarded the testimony of Roberto Oquendo that accused-appellant did not stab the victim. Note that Oquendo did not witness the actual stabbing incident. Pertinent portions of his testimony, state:

ATTY. ALOVERA:

x x x x x x x x

Q. How long have you known these boys [accused Joseph and Gerardo Bartolo]?

A. Since I started working at View Deck.

Q. When did you start working there?

A. June 19, 1997.

x x x x x x x x[26]

Q. If these two accused did not stab Teodorico Solano. Jr., do you know the person who stabbed him?

x x x x x x x x

A. I do not know, sir.

ATTY. ALOVERA:

Q. But you saw that he was stabbed by that stranger?

A. I did not see the actual stabbing. What I saw was the running of the assailant.

x x x x x x x x[27]

ATTY. DIAZ:

Q. Mr. Witness, please read the question and answer in Question and Answer No. 13.

x x x x x x x x

Q. And does translated as: Q: - Did you see the person who stabbed Teodorico Solano? and the A: - No. Do you affirm and confirm the question and answer No. 13 of your sworn statement?

A. Yes, sir.

x x x x x x x x

Q. And you testified that you told the police that the assailant was not Joseph Bartolo, is that correct?

A. Yes, sir.

Q. Mr. Witness, which is correct now? In your statement you said you did not know the assailant and you added that you did not see the assailant and in your testimony now, you said that it was not the accused Joseph Bartolo who stabbed the deceased?

A. That I do not know who was the assailant.

x x x x x x x x

Q. Mr. Witness, according to you, you never saw the assailant, you never know the assailant. What made you say before the police investigating officer that it was not Joseph Bartolo who stabbed the deceased?

A. Because they were not there during the stabbing incident.

x x x x x x x x[28]

Q. Mr. Witness, what made you conclude that that man who was running outside the establishment was the assailant?

A. Because why did he run, because there was an incident inside.

Q. That was the only basis of your statement, is that correct?

A. Yes, sir.

x x x x x x x x.[29]

Clearly, Oquendo is not a reliable witness because his testimony was based on conjectures. He merely surmised that the man running out of the restaurant was the assailant. It is possible, however, that the person he saw was witness Jaime Panaguiton who likewise rushed out of the restaurant to chase accused-appellant. Moreover,

Oquendo did not categorically declare that the physical appearance of the man he believed to be the assailant did not match that of accused-appellant. Certainly, Oquendo is not familiar to accused-appellant because he had known him only on the date the crime was committed. Hence, it is doubtful if Oquendo indeed saw or recognized the culprit as to competently declare that he was not accused-appellant.

The trial court correctly appreciated the qualifying circumstance of treachery. This is because the attack on the victim, though frontal was sudden and unexpected giving him no opportunity to defend himself.[30] As testified by the witness, accused-appellant's attack came as a surprise because he suddenly rushed inside the restaurant and stabbed the victim on the chest, affording no chance for said victim to retaliate or to defend himself.

However, the prosecution failed to present evidence that the killing was aggravated by evident premeditation.

Under Article 248 of the Revised Penal Code as amended by RA 7659, the penalty for murder is reclusion perpetua to death. There being no modifying circumstances and applying par. 2 of Art. 63 of the Code, the lesser penalty of reclusion perpetua shall be imposed.

Anent the civil liability of accused-appellant, the Court finds the award of P150,000.00 as moral damages excessive. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victims' heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[31] Nevertheless, moral damages are not meant to enrich an injured party. In line with prevailing jurisprudence, the award should be reduced to P50,000.00.[32] Likewise, the P120,000.00 civil indemnity for the death of the victim should be reduced to P50,000.00 per current case law.[33]

The award of P30,000.00 representing hospitalization and funeral expenses should also be reduced to P13,500.00,[34] considering that only said amount is supported by receipts or which appear to have been genuinely incurred in connection with the death, wake, and burial of the victim.[35]

Accused-appellant should also be ordered to pay exemplary damages in view of the presence of the qualifying circumstance of treachery. In *People v. Samson*,[36] citing *People v. Catubig*,[37] the Court ruled that insofar as the civil aspect of the crime is concerned, exemplary damages in the amount of P25,000.00 is recoverable if there is present an aggravating circumstance (whether qualifying or ordinary) in the commission of the crime.

Under Article 2206 of the Civil Code, in addition to the death indemnity, the accused shall be liable for the loss of the earning capacity of the deceased. In *People v. Panabang*,[38] the Court held that indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. In the instant case, the victim's income at the time of his death was sufficiently proven not only by the testimony of the victim's wife, but by the duly authenticated Service Record,[39] of the victim.

The formula[40] for computing the deceased's loss of earning capacity is as follows:

Net = Life expectancy x Gross Annual Income (GAI) - Living expenses

Earning $[\frac{2}{3} (80\text{-age at death})]$ (50% of GAI)

Capacity

At the time of his death, the victim was a 39 year-old[41] secondary school teacher with an annual salary of P100,788.00.[42] Using the said formula, his loss of earning capacity amounts to P1,375,756.00 computed as follows:

$= \frac{2}{3} [(80-39)] \times P100,788.00 - 50\%$

$$= 2/3 (41) \times (P100,788.00 - P50,394.00)$$

$$= 27.3 \times P50,394.00$$

$$= P1,375,756.00$$

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Roxas City, Branch 19, convicting accused-appellant Joseph Bartolo, alias “Bobong” of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay the heirs of the deceased Teodorico B. Solano, Jr., the following: P50,000.00 as civil indemnity, P50,000.00 as moral damages, P13,500.00, as actual damages, P25,000.00 as exemplary damages and P1,375,756.00 for the loss of earning capacity of the deceased.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Penned by Judge Sergio Pestaño.

[2] Rollo, p. 13.

[3] Records, pp. 24 and 47.

[4] TSN, September 11, 1997, pp. 25-32; September 15, 1997, pp. 6-10.

[5] TSN, September 8, 1997, pp. 3-26.

[6] TSN, July 24, 1997, pp. 3-10.

[7] TSN, July 22, 1997, pp. 17-25.

[8] Exhibit “A”, Records, p. 5; TSN, July 22, 1997, pp. 6-10.

[9] Exhibit “4”, Records, p. 246.

[10] Exhibit “5”, Records, p. 248.

[11] TSN, December 3, 1997, pp. 4-32.

[12] TSN, October 8, 1997, pp. 3-19.

[13] TSN, October 29, 1997, p. 17.

[14] TSN, October 7, 1997, pp. 3-40.

[15] TSN, October 2, 1997, pp. 4-40.

[16] Records, p. 315.

[17] Rollo, p. 34.

[18] Rollo, p. 53.

[19] *People v. Baltazar*, 352 SCRA 678, 686 [2001] , citing *People v. Reyes*, 292 SCRA 663 [1998] .

[20] *People v. De Leon*, G.R. No. 144052, March 6, 2002, citing *Regalado*, Remedial Law Compendium, Vol. II, (1995 ed.), p. 605.

[21] TSN, July 22, 1997, p. 25.

[22] *People v. Daramay, Jr.*, G.R. Nos. 140235 & 142748, May 9, 2002, citing *People v. Pontilar, Jr.*, 275 SCRA 338 [1997] ; *People v. Acabo*, 259 SCRA 75 [1996] ; *People v. Bawar*, 262 SCRA 235 [1996] .

[23] *People v. Rada*, 308 SCRA 191, 205, citing *People v. Villanueva*, 242 SCRA 47 [1995] ; *People v. Layno*, 264 SCRA 558 [1996] .

[24] *People v. Rada*, *supra*, citing *People v. Baguio*, 196 SCRA 459 [1991] .

[25] *People v. De Vera, Sr.*, 308 SCRA 75, 96 [1999] , citing *People v. Eubra*, 274 SCRA 180 [1997] .

[26] TSN, October 7, 1997, pp. 6-7.

[27] *Ibid.*, p. 13.

[28] *Id.*, pp. 21-23.

[29] *Id.*, p. 25.

[30] *People v. Obordo*, G.R. No. 139528, May 9, 2002, citing *People v. Garcia*, G.R. No. 129216, May 20, 2001; *People v. Gonzales*, G.R. No. 128282, May 30, 2001.

[31] *People v. Cabote*, G.R. No. 136143, November 15, 2001, citing *People v. Panado*, 348 SCRA 679 [2000] .

[32] *People v. Manlansing*, G.R. Nos. 131736-37, March 11, 2002, citing *People v. Casturia*, 345 SCRA 206 [2000] .

[33] *People v. Manlansing*, *supra*.

[34] Exhibits “F”, “G” and “I”, Records, pp. 131, 133.

[35] *People v. Tumayao*, G.R. No. 137045, April 16, 2001, citing *People v. Samolde*, 336 SCRA 632 [2000] ; *People v. Gutierrez*, 302 SCRA 643 [1999] ; *David v. Court of Appeals*, 290 SCRA 727 [1998]

[36] G.R. No. 124666, February 15, 2002.

[37] G.R. No. 137842, August 23, 2001.

[38] G.R. Nos. 137514-15, January 16, 2002.

[39] Exhibit “H”, Records, p. 132.

[40] *People v. Barnuevo*, G.R. No. 134928, September 28, 2001, citing *People v. Espanola*, 271 SCRA 689 [1997] ; *People v. Aspiras*, 330 SCRA 479 [2000] .

[41] Exhibit “A”, Records, p. 5.

[42] Service Record, Exhibit “H”, Records, p. 132.

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