

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO CALAGO, ACCUSED-APPELLANT.

G.R. No. 141122. April 22, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the judgment[1] of the Regional Trial Court of Barili, Cebu, Branch 60, finding the appellant, ROGELIO CALAGO, guilty of murder in Criminal Case No. CEB-BRL-214. The appellant was sentenced to suffer reclusion perpetua and ordered to pay the heirs of the victim, Arnulfo Lonzaga, the sum of P50,000.00 as civil indemnity.

The records show that an Information dated January 29, 1997, the appellant was accused of stabbing Arnulfo Lonzaga to death with the use of a sharp bladed weapon (plamingko), hitting the latter “at the lower portion of his left chest, right chest wall and left thigh.” The crime was allegedly committed with treachery and evident premeditation.[2]

The appellant was arraigned on May 13, 1998. With the assistance of counsel, he pled “not guilty.”[3]

The prosecution presented three (3) witnesses: (1) Dr. Octavio Ortiz, Municipal Health Officer of Dumanjug, Cebu; (2) Sotero Tewan; and (3) Pedro Durango.

The prosecution evidence show that on December 20, 1997, at about 3:30 a.m., Sotero Tewan was awakened by a commotion coming from the road, about thirty (30) to thirty-five (35) arm’s length from his house in Lamak, Dumanjug, Cebu. He checked out the source of the commotion. From a distance of about five (5) arm’s length, he saw the appellant, Rogelio Calago, and the victim, Arnulfo Lonzaga. The appellant was holding a knife, locally known as plamingko, while the victim was crying for help. The appellant then stabbed the victim who slumped on the ground. Thereafter, the appellant fled. Tewan rushed to the victim and asked him if he recognized the person who stabbed him to be sure if the victim could identify his assailant. The victim named the appellant.[4] Tewan recognized the appellant and the victim as the crime scene was well-lighted by the new moon. He also personally knew them for a long time as they were residents of adjacent barangays. Appellant is even his kumpadre.

Pedro Durango, a neighbor of Sotero Tewan and a brother-in-law of the appellant, also heard the victim’s cry for help. When he repaired to the crime scene, Tewan was already with the wounded victim, lying on the ground. He overheard Tewan inquire from the victim who stabbed him. The victim replied that it was the appellant. By then, some of their neighbors had gathered at the crime scene. To make the identification clearer, Durango also asked the victim who stabbed him. Again, the victim pointed to the appellant. The victim expired five (5) minutes later.[5]

The victim was autopsied on December 20, 1997 by Dr. Octavio Ortiz, Municipal Health Officer of Dumanjug, Cebu. He sustained three (3) stab wounds. Stab wound no. 1 was located at the lower portion of the left chest wall, wound no. 2 was at the right chest wall and wound no. 3 was at the posterior lobe mid-portion of the left

thigh. Stab wound nos. 1 and 2 were fatal because they hit the vital organs of the body, namely, the heart and the upper lobe of lungs. All three (3) wounds caused massive loss of blood that resulted in the death of the victim.[6]

For its part, the defense presented the following witnesses: (1) Bernardita Alvios; (2) Bonifacio Durango Calago; and (3) the appellant, Rogelio Calago.

The appellant denied that he killed the victim. He claimed that he was in his house on the material date and time due to stomach ache. According to him, he had a stomach ache since December 19, 1997. It lingered until the dawn of December 20, 1997. At about 7:00 a.m., that same day, a younger sister of his wife informed them that he was a suspect in the killing of Arnulfo Lonzaga. His story was corroborated by Bernardita Alvios and Bonifacia Calago.

Bernardita Alvios was a neighbor of the Calagos for eight (8) years. At 5:00 p.m. on December 19, 1997, she claimed that she went to the appellant's house to ask for radish (kalamungay). At that time, the appellant was suffering from a stomach ache and his wife, Bonifacia, was attending to his needs. Alvios left as soon as she got the radish from the couple. She admitted that it was the first and the only time she went to the Calagos in the eight (8) years that they had been neighbors.

Bonifacia Calago confirmed that the appellant was in their house in the early dawn of December 20, 1997. Allegedly, he suffered from stomach ache starting December 19, 1997. Due to his illness, she hardly slept in the evening of said date to attend to him. However, she admitted that she fell asleep, albeit very lightly, between 3:00 a.m. up to 4:00 a.m. of December 20, 1997. She woke up at 4:00 a.m. when the rooster crowed. At 9:00 a.m., her sister arrived in their house and reported to them that the appellant was a suspect in the killing of Arnulfo Lonzaga. She cried upon hearing the report. The policemen came to their house and arrested him.

The trial court found the prosecution's version to be more credible and convicted the appellant of murder. Hence, the appeal.

The appellant contends that:

"I.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT ROGELIO CALAGO GUILTY OF THE CRIME OF MURDER DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE PRESENCE OF THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER."

We find the appellant guilty of homicide, not murder, for the killing of the victim, Arnulfo Lonzaga.

Eyewitness Sotero Tewan testified as follows:[7]

"FISCAL NAZARENO:

Q:

Now on December 20, 1997, at 3:30 o'clock dawn, can you tell us where were you?

(WITNESS):

A:

I was at the house.

Q:

What happened while you were at the house at that time?

A:

I heard a commotion.

Q:

What did you do when you heard a commotion?

A:

I went downstairs(s) of my house.

xxx xxx xxx

Q:

You said that you went downstairs and went nearer to the place where you heard the commotion to verify. What was the result of that verification?

A:

I saw Rogelio Calago and Arnulfo Lonzaga.

Q:

What were the two (2), Rogelio Calago and Arnulfo Lonzaga doing at that time?

A:

Arnulfo Lonzaga was crying for help.

Q:

...Why was he crying for help?...

A:

I saw that Rogelio Calago was holding a knife on the right hand and he stabbed it toward Arnulfo Lonzaga.

Q:

How far were you when you saw the incident?

A:

About five (5) arms length.

Q:

How far were you from your house when you saw Rogelio Calago stabbed (sic) Arnulfo Lonzaga?

A:

About thirty (30) arms length more or less.

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Q:

Was Arnulfo Lonzaga hit by the stab?

A:

Yes.

Q:

Where was Arnulfo Lonzaga hit?

A:

At the chest.

Q:

What happened to Arnulfo Lonzaga after being hit by the stab of Rogelio Calago?

A:

He fell to the ground.

Q:

You said that you went nearer to Arnulfo Lonzaga, what did you do when you were near to (sic) him?

A:

We then help(ed) him?

Q:

Who were with you at that time?

A:

I was with Pedro Durango.”

On cross-examination, he further declared as follows:[8]

“ATTY. DONDOYANO:

Q:

You are telling this Honorable Court that you were awakened by the noise or arguments between Arnulfo Lonzaga and Rogelio Calago?

A:

Yes.

Q:

Now, is it true that it was very dark during that time?

A:

It was well-lighted because it was a new moon at that time.

Q:

Do you know that if you are caught telling a lie because you testified under oath, you will be imprisoned with a charge of perjury?

A:

Yes, I know that.

Q:

Are you sure that at 3:30 o'clock dawn of December 20, 1997, there was still a moon lighting at that time?

A:

Yes.

xxx xxx xxx

Q:

You said when you woke up at 3:30 o'clock you heard a commotion. Is that right?

A:

Yes.

Q:

And when you were downstairs you heard somebody crying for help? Is that right?

A:

Yes.

Q:

Who was that person crying for help?

A:

Arnulfo Lonzaga.

Q:

How did Arnulfo Lonzaga express his cry for help?

A:

He said he was stabbed by Rogelio Calago.

COURT:

Q:

What is the exact word of Arnulfo Lonzaga?

A:

He said: 'please help me because I was stabbed by Rogelio Calago.'

Q:

Do you mean to say that you did not actually see Rogelio Calago stabbing Arnulfo Lonzaga because at that time you were still five arms length away?

A:

I saw the actual stabbing because when I was there in the house I heard a commotion and when I went downstairs to verify I heard Arnulfo Lonzaga crying for help because he was stabbed by Rogelio Calago.

Q:

And because of that commotion you presumed that it was Rogelio Calago who stabbed Arnulfo Lonzaga.

A:

Because Arnulfo Lonzaga told us that he was stabbed by Rogelio Calago.

Q:

You said that when you heard Arnulfo Lonzaga crying for help because he was stabbed, it must be that the stabbing was already committed at that time?

A:

Yes that is true.

Q:

And because the crime was already through, it was already committed and you saw Rogelio Calago holding a knife, therefore, you presumed that Rogelio Calago is the one who stabbed Arnulfo Lonzaga?

A:

Yes. Rogelio Calago was holding a knife when I arrived at the scene of the incident.

Q:

And because you saw Rogelio Calago holding a knife you presumed(d) that Rogelio Calago was the one who stabbed Arnulfo Lonzaga? Nobody told you?

A:

Arnulfo Lonzaga told us that he was stabbed by Rogelio Calago.

xxx xxx xxx

ATTY. DONDOYANO:

Q:

Is it correct Mr. Tewan that when you approached Arnulfo Lonzaga, you asked him who stabbed him?

A:

Yes, we asked him that question.

Q:

Which means that when you approached Arnulfo Lonzaga and asked him who stabbed him, you did not know who stabbed him actually?

FISCAL NAZARENO:

I does not necessarily follow, Your Honor.

COURT:

That is part of the testimony of the witness, because had he known the one who stabbed Arnulfo Lonzaga he would not have ask(ed).

Witness may answer.

A:

We asked him that question in order to confirm if Arnulfo Lonzaga could really identify the assailant.”

We reject appellant’s argument that witness Tewan could not have identified him. We are convinced that Tewan did not err in identifying the appellant. He personally knew the appellant for a number of years. They are even kumpadres. Tewan saw the latter and the victim at a close range of five (5) arm’s length. At that time, too, the crime scene was not completely dark as it was already dawn and the moon was still shining. Thus, Tewan was able to describe the bladed weapon used by the appellant in attacking the victim. He also related where the fatal thrust landed.[9] We also examined the testimony of Tewan and we could not find any reason for him to commit any falsehood as to the identity of the appellant.

There is another reason why there can be no doubt that it was appellant who killed the victim. The victim’s statement as to the identity of the appellant as his assailant is competent evidence as a dying declaration or at the very least, as part of *res gestae*.

A dying declaration pertains to the declarant's statements on the cause and surrounding circumstances of his death made under the consciousness of an impending death.[10] It is admissible because, as a general rule, when the person is at the point of death, every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth, and therefore, his statements, under such circumstances, deserve great weight.[11]

On the other hand, the declarant's utterances are considered part of *res gestae* when made immediately after a startling occurrence. The admission of such utterances are based on the well founded belief that words spoken instinctively at the time of a specific transaction or event, without the opportunity for the speaker to effectively concoct a fabricated version of the startling event can only be but credible.[12]

In the case at bar, Durango corroborated the testimony of Tewan concerning the victim's declaration as to the identity of his assailant shortly before he died, thus:[13]

"FISCAL NAZARENO:

xxx xxx xxx

Q:

What happened while you were at your house on Dec. 20, 1997 at 3:30 o'clock dawn?

A:

I heard a cry for help.

Q:

Can you tell us what is (sic) the exact words uttered by one crying for help?

A:

'Help me because I was stabbed.'

Q:

When you heard that cry for help, what did you do?

A:

I hurriedly went down from the house and proceeded to the place where the cry for help came.

xxx xxx xxx

Q:

What did you see when you arrived at the place where the cried (sic) for help was heard?

A:

I saw Arnold (sic) Lonzaga lying on the ground, wounded.

Q:

Are you referring to Arnold (sic) Lonzaga the victim in this instant case?

A:

Yes.

Q:

What was the situation of Arnold (sic) Lonzaga when you saw him?

A:

He was in critical condition.

Q:

Then, what did you do next?

A:

I asked Arnulfo Lonzaga who stabbed him.

Q:

And what was his answer?

A:

He answered that Rogelio Calago was the one who stabbed him.”

On cross-examination, Durango stated as follows:[14]

“ATTY. DONDOYANO:

Q:

In your affidavit, Mr. Durango, specifically in paragraph 4, you said and I quote “that when I arrived at the place of the incident, I heard that Sotero Tewan asked (sic) Arnulfo Lonzaga who stabbed him” and Arnulfo Lonzaga answered that it was Rogelio Calago who stabbed him. Now, contrary to what you have said during the direct-examination, it was not actually you who asked that question but it was Sotero Tewan? Am I correct?

A:

I also asked personally that question to Arnulfo Lonzaga.

Q:

Why was there a need when you already heard the answer?

A:

I wanted to make it clear.

Q:

You mean to tell this Court that the answer was not clear that you want to make it become clearer?

A:

Yes, because there were several neighbors coming at the scene of the incident.

Q:

Then why did you not include that in your affidavit, the narration of the event that actually happened at that time?

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WITNESS:

A:

It was Durok Lanojan who typed this affidavit and he was in a hurry at that time and the question propounded did not include that question.

ATTY. DONDOYANO:

Q:

Now, Mr. Durango, when you approached Arnulfo Lonzaga, what was his condition?

A:

He was very critical (sic) at that time.

Q:

But he could still talk to you even if his face was facing the ground?

A:

Yes.

Q:

Can you tell us from the time you talked to each other, how many hours later did he expire?

A:

About five (5) minutes.”

On re-direct examination, Durango clarified his statement as follows:[15]

“FISCAL NAZARENO:

Q:

You said that when you arrived at the scene of the incident, this Sotero Tewan was already there?

A:

Yes.

Q:

And when you arrived, Sotero Tewan was already talking to Arnulfo Lonzaga?

A:

Yes.

Q:

At the time when you asked Arnulfo Lonzaga who stabbed him, were there other persons around?

A:

Yes, my neighbors.

Q:

Can you please tell us their names?

A:

Feliciano Minoza, Fredo Cebel, Ben Minoza and the son of Sotero Tewan, Pabling Tewan.

Q:

You mean to say that they also heard what Arnulfo Lonzaga told you?

A:

Yes.”

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.[16]

It appears that no direct statement was made by the victim to prove that he was conscious of his impending death. Nonetheless, apart from the statements of the declarant, his consciousness of impending death can be proved by surrounding circumstances, such as the nature of injury or by his conduct.[17]

We can glean from the circumstances that the victim was aware of his impending death when he named the appellant as his assailant. The victim was in critical condition. He sustained severe injuries in the vital organs, such as the heart and the lungs. He bled profusely and due to massive hemorrhage secondary to the stab wounds, he died within minutes after he named the appellant.

Parenthetically, as in the case of Tewan, there is no showing that Pedro Durango was motivated by ill will in testifying against the appellant. Indeed, they are brothers-in-law, i.e., the appellant’s wife, Bonifacia Calago, is his sister. Thus, it would be unlikely for Durango to fabricate the victim’s declaration pointing to the appellant as the assailant. His testimony deserves full faith and credit.

We now consider whether the circumstances of treachery and evident premeditation should be rightly appreciated against the appellant. The appellant contends that the prosecution failed to prove the presence of the qualifying circumstances of treachery and evident premeditation. The Solicitor General agrees.

We sustain the appellant.

There is treachery when the offender employs means, methods or forms in the execution of the crime which tends directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[18]

In the case at bar, witness Tewan did not give any testimony on how the attack started. He only related that when he arrived at the crime scene, he saw the appellant stab the victim. Before that, he recalled that he was awakened because he heard a commotion and when he went outside his house to check it out, he heard the victim shouting for help. There was no testimony on his part whether the attack was sudden and unexpected that it afforded the victim no chance to defend himself.

We have held that for treachery to exist, there must be evidence showing that the mode of attack was consciously or deliberately adopted by the culprit to make it impossible or difficult for the person attacked to defend himself or retaliate.[19] Considering that the eyewitness did not see the onset of the assault, it cannot be said that the appellant had deliberately adopted a method or mode that deprived the victim of an opportunity to retaliate. Treachery must be proved by clear and convincing evidence as clearly as the crime itself. Otherwise, it cannot be appreciated.[20]

The trial court also erred in appreciating the circumstance of evident premeditation. For evident premeditation to be appreciated, the following must be proven: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequences of his act. None of these

elements has been established in the case at bar.

In the absence of any circumstance that would qualify the crime at bar to murder, the appellant could only be held accountable for homicide as defined and penalized under Article 249 of the Revised Penal Code. The prescribed penalty for said crime is reclusion temporal. Considering that there was neither mitigating nor aggravating circumstance present in the commission of the crime, the penalty has to be imposed in the medium period, ranging from 14 years, 8 months and 1 day to 17 years and 4 months. The appellant, however, is entitled to avail of the provisions of the Indeterminate Sentence Law. Thus, he should be sentenced to an indeterminate penalty, the minimum of which would be within the range of prision mayor and the maximum thereof would be within the range of reclusion temporal in its medium period.

IN VIEW WHEREOF, the judgment in Criminal Case No. CEB-BRL-214 is MODIFIED. The appellant is declared guilty beyond reasonable doubt of homicide under Article 249 of the Revised Penal Code. He is sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum.

The civil indemnity in the amount of P50,000.00 awarded in favor of the heirs of the late Arnulfo Lonzaga is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez[**], and Austria-Martinez, JJ., concur.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., on official leave.

[**] Per Special Order No. 220, dated April 22, 2002.

[1] Dated July 10, 1999, see Rollo, pp. 17-24.

[2] Original Records, p. 1.

[3] Id., p. 34.

[4] TSN, Sotero Tewan, September 1, 1998, pp. 3-5, 8, 10-12.

[5] TSN, Pedro Durango, September 2, 1998, pp. 2-3.

[6] TSN, Dr. Octavio Ortiz, August 11, 1998, pp. 5-6; Exh. "A", Original Records, pp. 10-11.

[7] TSN, Sotero Tewan, September 1, 1998, pp. 3-5.

[8] Id., pp. 8, 10-12.

[9] Exh. "B", Original Records, pp. 8-9.

[10] People vs. Preciados, et al., G.R. No.122934, January 5, 2001.

[11] People vs. Bacunawa, et al., G.R. No. 136859, April 16, 2001.

[12] People vs. Mosende, G.R. No. 137001, December 5, 2001.

[13] TSN, Pedro Durango, September 2, 1998, pp. 2-3.

[14] Id., pp. 7-8.

[15] Id., p. 9.

[16] People vs. Bergante, 286 SCRA 629, 638 (1997).

[17] People vs. Bautista, 278 SCRA 613, 624 (1997) citing People vs. Devaras, 37 SCRA 697, 705 (1971) and People vs. Chan Lin Wat, 50 Phil. 182, 191 (1927); People vs. Calixtro, 208 Phil 317, 330 (1983).

[18] Article 14 (16), Revised Penal Code.

[19] People vs. Herida, et al., G.R. No. 127158, March 5, 2001.

[20] See People vs. Mationg, et al., G.R. No. 137989, March 27, 2001.

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