PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELSON BITUON, ACCUSED-APPELLANT.

G.R. No. 142043. September 13, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The instant case is here on appeal from the judgment[1] of the Regional Trial Court of Manila, Branch 18 finding accused-appellant Nelson Bituon guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

On September 13, 1995, an information charging accused-appellant of the crime of murder was filed before the Regional Trial Court of Manila. The information reads, as follows:

> "That on or about November 23, 1994, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one Gerardo Castillo by then and there stabbing him with a bladed weapon, hitting him on the different parts of his body, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter[2]
>
> Contrary to law."

Upon arraignment, accused-appellant pleaded not guilty to the crime charged against him and thereafter, trial on the merits ensued.

The facts of the case, as found by the trial court, are as follows:

> "The record shows that the accused and Gerardo Castillo used to be neighbors at the Parola Compound, Del Pan, Tondo, Manila. On April 12, 1992, a brother of the accused was killed in a rumble that occurred in the neighborhood between the family of the accused and that of the Castillo family. The accused suspected that it was the Castillo family that was responsible for the death of his brother, because Gerardo Castillo and his brother Eddie Castillo has warned him, (accused), that he would be next. Fearful for his life, the accused and his family transferred their residence to Kataingan, Masbate, where his in-laws are from.
>
> On November 23, 1994, at around 6:30 p.m., Gerardo Castillo was in the vicinity of the Mary Johnston Hospital, Tondo, Manila, when the accused suddenly appeared from behind and stabbed Gerardo on his back and right side. Though mortally wounded, Gerardo was able to walk all by himself to the Mary Johnston Hospital, for treatment. On learning that her son was at the hospital, Virginia Castillo rushed thereto and she was able to talk to Gerardo, who confided to her that the accused was the one that stabbed him. And his exact words as quoted by his mother were: `Nanay, and sumaksak po sa akin ay si Nonoy (nickname of accused).'
>
> Due to inability of Virginia to deposit P5,000.00 with the Mary Johnston Hospital, she took her son to the Jose Reyes Hospital. On their way to the Jose Reyes Memorial Hospital, Gerardo asked her not to neglect his children should anything happen to him. The following morning, Gerardo succumbed to the two stab wounds inflicted by the accused, Exhibit "I", "J" and "k'.

> The accused went into hiding until he was arrested by the police in Bacoor, Cavite, on July 17, 1997, for illegal possession of firearms. Later, he was turned over to the custody of this Court through the Warden of the Manila City Jail in connection with this case.
>
> The stabbing incident was witnessed by Ernesto Cabaniero, a retired seaman, single, 55 years old and a resident of 6646 Delpan Street, Binondo, Manila. He testified that on the evening in question, between the hour of 6:00 and 7:00 p.m., he was walking on Marga Street near the Mary Johnston Hospital, when he saw a man approach the victim and suddenly stab him at his back and other parts of his body. And on being asked by the trial prosecutor to look around in the courtroom to find out if the slayer was present, he pointed out and positively identified the accused as the killer of the victim. Not wanting to be involved, Cabaniero immediately went home. Three days later, he learned from the people in his place that the victim died as a result of the stab wounds he suffered. Several weeks later, he was approached by a woman, who resides one block away from his house, and she pleaded to him to testify in the case. At first he refused, but after the woman continued to entreat him on the matter, he was bothered by his conscience and he finally agreed to testify[3]."

On December 3, 1999, the court a quo rendered a decision convicting accused-appellant of the crime of murder. The dispositive portion of the decision reads:

> "WHEREFORE, the court finds the accused Alexander (alias Nelson) Bituon, guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law, and to pay the cost.
>
> On the civil liability of the accused, the Court sentences him to pay the heirs of the victim, Gerardo Castillo, moral and nominal damages in the sum of P300,000.00 and P200,000.00 respectively, and legal compensation for the loss of the victim in the sum of P50,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.
>
> SO ORDERED.[4]"

Hence, this appeal where accused-appellant raises the following assignment of errors[5]:

> I.
>
> THE LOWER COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION AGAINST THE ACCUSED WHICH WERE NOT PROVEN BY THE PROSECUTION.
>
> II.
>
> THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED UNDER ARTICLE 248 OF THE REVISED PENAL CODE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

After a meticulous review of the evidence on record, we resolve to uphold the trial court's judgment of conviction.

In the case at bar, accused-appellant was positively identified as the person who stabbed the victim Gerardo Castillo in the early evening of November 23, 1994. Witness Ernesto Cabaniero testified that he saw accused-appellant attack the victim by stabbing him on the back and on the right side of his body. Cabaniero, who was about 4 to 5 arms' length away when the stabbing incident happened, was able to recognize accused-appellant because the place was well lit by several lampposts and, in fact, he was able to take note of accused-appellant's mole on the left side of his face. The pertinent portions of Cabaniero's testimony is as follows:

> "PROS. PABELONIA TO WITNESS: (Direct-Exam)
>
> Q:

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Mr. Witness, on November 23, 1994, between the hour of 6:00 and 7:00 in the evening, do you recall where you were?

A:

I am (sic) at Morga Street.

Q:

Where is this Morga Street located, in what District in Manila?

A:

Near Mary Johnson, Tondo, Manila.

Q:

Where did you come from at that time?

A:

I came from Sundeo Street, Tondo, Manila.

Q:

Where were you going then?

A:

I was going to Kagitingan Street.

Q:

While you were walking along Morga Street on your way to Kagitingan Street, on that particular day and time, do you recall of any unusual incident that took place?

A:

Yes, Sir.

Q:

Will you describe to this Hon. Court that unusual incident that took place?

A:

We heard somebody call our attention (may sumitsit po).

Q:

Then what happened after that?

A:

I saw somebody approach Gerry Castillo.

Q:

Then what happened?

A:

Gerry Castillo was stabbed at the back.

Q:

Who stabbed him?

A:

(witness pointing to a man who answered by the name of Nelson Bituon, the accused in this case)

THE COURT:

Was he the one you saw approached Gerry Castillo?

A:

Yes, Sir.

X X X

PROS. PABELONIA TO WITNESS:

Q:

Now, you stated a while ago, that while you were walking along Morga Street, you heard somebody calling the attention of somebody, you said "may sumitsit". Were you able to identify the person who made this "may sumitsit"?

A:

The accused, Sir.

Q:

How far were you from the accused when you heard him?

A:

Four or five arms length away, Sir.

Q:

And according to you the accused suddenly stabbed the victim Gerardo Castillo?

A:

Yes, Sir.

Q:

Now, what was the lighting condition in the area where this incident happened?

A:

It was well lighted because there were several lampposts nearby.

Q:

Now, will you demonstrate to the Honorable Court how the accused stabbed the victim?

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(witness demonstrating by placing his left hand on the left shoulder of the Court personnel who played the part of the victim and with the right hand of the witness he thrashed it toward the back of the alleged victim)

THE COURT:

How many times was the victim stabbed?

A:

Three times, Sir.

THE COURT:

All at the back?

A:

I saw the accused stab the victim three times and I saw the victim stabbed at the back and on the right side of his body.

THE COURT:

Continue, Prosecutor.

PROS. PABELONIA TO WITNESS:

Q:

Now, what happened to the victim after he was stabbed?

A:

I did not stop, I went home so I did not know anymore what happened to the victim.

THE COURT:

Why, you did not try to help the victim?

A:

I was afraid.

THE COURT:

You did not attempt to help the victim because you were afraid?

A:

Yes, Sir.

Q:

What made you so sure that it was the Accused Alexander alias Nelson Bituon who stabbed the victim?

A:

I was able to see his face clearly, in fact he has a mole on the left side of his face.

THE COURT:

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Make it on record that on the left cheek of the accused there is a mole (nunal).

Q:

Do you know the accused before the incident?

A:

I only knew him by face[6]."

In this case, the trial court found that witness Cabaniero was in a position to clearly see the face of the assailant. He was just four to five arms lengths away from the accused when the incident occurred. He was able to clearly witness the fatal stabbing as immediately before the said incident, he heard accused-appellant call the attention of the victim by making a "pssst" sound. Furthermore, the street was well lit by lampposts, giving him a good look at the physical features of accused-appellant without any obstruction. In fact, he was even able to make out a distinguishing feature of accused-appellant - the mole on the left side of his face. Given these circumstances, we find no reason to doubt the identification by the witness of accused-appellant as the perpetrator of the crime.

Moreover, as pointed out by the Solicitor General[7], the defense failed to adduce evidence showing ill motive on the part of Cabaniero in testifying against appellant, especially on such a serious charge as murder. Cabaniero was not a relative or a friend of the victim; he was a mere bystander who witnessed the stabbing incident. It is well settled that, where there is nothing to indicate that a witness was actuated by improper motives, his positive and categorical declarations on the witness stand under solemn oath deserves full faith and credence.[8]

Moreover, the utterances of the deceased prior to his death that it was accused-appellant who stabbed him constitute a dying declaration and are admissible as evidence. Under Rule 130, Section 37, the requisites for the admissibility of ante-mortem statements are: (1) the statement concerns the crime and surrounding circumstances of the declarant's death; (2) at the time it was made, the declarant was under the consciousness of an impending death; (3) the declarant would have been competent as a witness had he survived; and (4) the declaration was offered in a criminal case for homicide, murder, or parricide in which the declarant was the victim[9]. Dying declarations are considered an exception to the hearsay rule since they are made in extremis, when the declarant is at the point of death. For then, the motive to commit falsehood is improbable and the inclination is only to speak the truth[10].

In the present case, all four requisites for the admissibility as a dying declaration of the victim's statement that accused-appellant was his assailant are present. When victim Gerardo Castillo was stabbed, he immediately staggered to the nearby Mary Johnston Hospital. When his mother met him at the hospital, he immediately told her that it was accused-appellant who stabbed him[11]. He made the statement in contemplation of an approaching death, as he even told his mother afterwards that should anything happen to him, his children should not be neglected[12]. Nor is there any question that had the victim survived, he would have been competent to testify in court, as there is no evidence to the contrary[13]. Finally, the dying declaration was in fact offered in a criminal prosecution in which the declarant was the victim.

Furthermore, the same declaration may also be properly admitted in evidence as part of the res gestae. A declaration made spontaneously after a startling occurrence is deemed as such when (1) the principal act, the res gestae, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances[14]. The utterance of the victim that accused-appellant was his assailant almost immediately after the incident clearly satisfies these three requisites. As such, the statement is likewise admissible as part of the res gestae.

For his part, accused-appellant merely denied having committed the killing and, instead, he insisted that at the

time of the incident, he was in Kataingan, Masbate where he had been staying since 1992[15]. The only reason he can think of as to why he was being charged for the murder of Gerardo Castillo was revenge. He claimed that before he transferred to Masbate, he and the victim were neighbors in Tondo. A rumble had occurred between their two families and as a result, a brother of accused-appellant had died. Thus, accused-appellant theorized that Virginia Castillo, the mother of the victim, accused him of killing her son only because he had a motive for doing so - to take revenge for the death of his brother[16].

Accused appellant's bare denial cannot stand in view of the evidence presented by the prosecution. Denial, like alibi, is a weak defense, which becomes even weaker in the face of the positive identification of the assailant by an eyewitness[17]. As previously stated, there is no suggestion that Ernesto Cabaniero had some ill motive to testify falsely against him. On the other hand, accused-appellant's suggestion of ill-motive on the part of the mother of the victim is much too strained to be taken seriously. As such, where there is no evidence to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that such witnesses were not so moved and that their testimonies are entitled to full faith and credit[18].

All in all, we find that the trial court committed no error in convicting accused-appellant for the death of the victim Gerardo Castillo. His defense of denial is unavailing where there is affirmative evidence of the identity of the accused as the perpetrator of the crime as well as where there is an ante mortem statement of the victim received either as a dying declaration or as part of the res gestae[19].

In his Appellant's Brief, accused-appellant faults the trial court for appreciating the qualifying and aggravating circumstances of evident premeditation and treachery which he claims were not sufficiently established by the evidence presented by the prosecution. Thus, accused-appellant argues, he should only be convicted of homicide as there was no circumstance which would qualify the killing to murder.

We agree with accused-appellant that the circumstance of evident premeditation was not proven in the instant case. For evident premeditation to be considered, the following must be proved: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act[20]. In this case, no attempt was made by the prosecution to establish the above requisites. There is no proof as to when the plan to kill was made or how the accused-appellant planned and prepared for the killing of the victim considering that the eyewitness to the incident only saw the attack as it was being carried out.

With respect to the qualifying circumstance of treachery, however, we believe that the same was adequately proven by the prosecution.

Treachery is appreciated 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 ensure its execution without risk to himself arising from any defense which the offended party might make[21]. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim[22].

In the case at bench, treachery on the part of the accused-appellant in committing the crime is shown by the following testimony of witness Ernesto Cabaniero:

> "PROS. PABELONIA TO THE WITNESS:
>
> Q:
>
> Going back to the incident. When you say that you heard the accused made a "sitsit," calling the attention of

somebody, how long did it take from that time to the time when you saw him stab the victim?

A:

Only a matter of seconds.

Q:

How far was the victim from the accused when he made this "sitsit?"

A:

Two arms length away, Sir.

Q:

Where was the accused at the time in relation to the victim?

A:

The accused was on the right side of the victim.

Q:

Do you know what the victim was doing at that time?

A:

He was riding a bicycle.

THE COURT:

So when the accused called his attention, he stopped, the victim stopped?

A:

Yes, sir.

Q:

So after the victim stopped, what happened?

A:

He was stabbed.

Q:

Was the victim still riding in his bicycle when he was stabbed?

A:

He was already standing and holding his bicycle when he was stabbed.[23]"

Thus, the testimony shows that while the victim was riding a bicycle, accused-appellant called his attention by making a "pssst" sound. When the victim stopped to see who was calling him and while he was still holding on to his bike, accused-appellant immediately stabbed the victim at the back and the right side of the body without any warning and without any provocation on the part of the victim. All these took place in a matter of seconds. Clearly, the victim was caught off guard by the sudden and unexpected attack and there was no way he could have defended himself considering that he was still holding on to his bike when he was attacked.

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Thus, with treachery having attended the commission of the crime, the trial court thus committed no error in convicting accused-appellant for the crime of murder. The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. In accordance with Article 63 of the same Code, there being no mitigating or aggravating circumstances, the lesser penalty should be imposed. Accordingly, accused-appellant should be sentenced to suffer the penalty of reclusion perpetua.

We must modify, however, the award of damages made by the trial court.

We affirm the award of P50,000 as indemnity for the loss of the victim's life as this is in accord with prevailing jurisprudence[24]. However, the award of moral damages must be reduced from P300,000 to P50,000 as the purpose of this award is not to enrich the heirs of the victim but to compensate them for the injuries to their feelings.[25]

We agree with the trial court that the amount of P40,700 as actual expenses for hospital bills, funeral services and other related expenses[26] may not be awarded for failure to adequately prove the same. The Court can only grant such amounts if they are supported by receipts[27]. In the absence thereof, no award of actual damages can be granted. There is however, no doubt that injury was sustained by heirs of the deceased due to accused-appellant's actions. In the absence of competent proof on the specific amounts of actual damages suffered, the heirs of the victim are entitled to nominal damages[28]. The award of P200,000 as nominal damages made by the trial court, however, is excessive. The Court deems the amount of P15,000 as nominal damages to be reasonable under the circumstances[29].

Finally, the trial court should have likewise made an award for the loss of the earning capacity of the victim. The absence of documentary evidence to substantiate the claim for the loss will not preclude recovery for said amount.[30] The mother of the victim, Virginia Castillo, testified that at the time of his death, Gerardo Castillo was earning P4,000 a month as a construction worker[31]. It was also established that at the time of his death, the victim was 29 years old[32]. Hence, in accordance with the American Expectancy Table of Mortality adopted by this Court in several cases[33], the loss of his earning capacity is to be calculated as follows:

Net earning capacity (x) = life expectancy x

Gross
Annual
Income

-

Living expenses
(50% of gross
annual income)

2 (80 - 29)

X =

---

x

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(48,000 - 24,000)

3

X =

17

x

24,000

X =

408,000

The heirs of Gerardo Castillo are thus entitled to the sum of P408,000 as indemnity for the loss of the earning capacity of the victim.

WHEREFORE, accused-appellant Nelson Bituon is hereby found guilty beyond reasonable doubt of the crime of murder and the penalty of reclusion perpetua is hereby imposed. Accused-appellant is likewise ordered to pay the heirs of the victim the following: (1) death indemnity of P50,000.00; (2) moral damages of P50,000.00; (3) nominal damages of P15,000.00; and (4) indemnity for loss of earning capacity of P408,000.00.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Judge Perfecto A.S. Laguio, Jr.; Rollo, pp. 14-16.

[2] Rollo, p. 6.

[3] Rollo, pp. 14-15.

[4] Rollo, p. 16.

[5] Rollo, p. 39.

[6] T.S.N., January 21, 1998, pp. 3-6.

[7] Rollo, p. 65.

[8] People vs. Benito, 303 SCRA 468; People vs. Ebrada, 296 SCRA 353; People vs. Paynor, 261 SCRA 615.

[9] People vs. Bromo, 318 SCRA 760.

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[10] People vs. Bahenting, 303 SCRA 558; People vs. Atrejonio, 310 SCRA 229.

[11] T.S.N., October 21, 1998, p. 5.

[12] Ibid, p. 6.

[13] People vs. Bromo, supra.

[14] People vs. Gado, 298 SCRA 466; People vs. Amaca, 277 SCRA 215; People vs. Santos, 270 SCRA 650.

[15] T.S.N., August 10, 1999. p. 3.

[16] Ibid, pp. 3-4.

[17] People vs. Macuha, 310 SCRA 14; People vs. Apongan, 270 SCRA 713.

[18] People vs. Cabebe, 290 SCRA 543; People vs. Pill, 289 SCRA 118.

[19] People vs. Brimo, supra; People vs. Estera, 207 SCRA 703; People vs. Baguio, 196 SCRA 459.

[20] People vs. Cabodoc, 263 SCRA 187; People vs. Belga, 258 SCRA 583.

[21] People vs. Gaballo, 316 SCRA 881; People vs. Tañedo, 266 SCRA 34.

[22] People vs. Tabones 304 SCRA 781 People vs. Vermudez, 302 SCRA 276.

[23] T.S.N., January 21, 1998, p. 8.

[24] People vs. Silvestre, 307 SCRA 68; People vs. Verde, 302 SCRA 690.

[25] People vs. Verde, supra.

[26] T.S.N., October 21, 1998, p. 8.

[27] People vs. Silvestre, supra; People vs. Gutierrez, 302 SCRA 643.

[28] People vs. Dianos, 297 SCRA 191 citing Sumalpong vs. Court of Appeals, 268 SCRA 764.

[29] People vs. Dianos, supra.

[30] People vs. Verde, supra.

[31] T.S.N., October 21, 1998, p. 8.

[32] Ibid.

[33] People vs. Verde, supra; People vs. Gutierrez, supra.

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