

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAMIL BERUEGA AND ROGELIO BERUEGA, APPELLANTS.

G.R. No. 142931. April 11, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Alibi and denial cannot prevail over positive, clear and convincing testimony identifying the accused as the culprits. This is especially true when appellants fail to prove the impossibility of their presence at the time and place of the commission of the crime.

The Case

Ramil and Rogelio Beruega appeal the September 30, 1999 Decision[1] of the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 76) in Criminal Case No. 3833 finding them guilty of murder. The dispositive portion of the Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding herein accused Ramil Beruega and Rogelio Beruega guilty beyond reasonable doubt of the crime of [m]urder, as defined and penalized under Art. 248 of the Revised Penal Code as amended, and sentencing each of them to suffer the penalty of [r]eclusion [p]erpetua and to indemnify the heirs of Galicano Retirado II in the amount of P50,000.00 plus P79,485.71 as actual damages and to pay costs.”[2]

The Information, dated October 21, 1998, charged appellants as follows:

“That on or about the 31[st] day of December 1997, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and mutually helping and aiding with one another, while armed with a bladed weapon, with intent to kill, evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one GALICANO RETIRADO II, with the said weapon, thereby inflicting upon the latter multiple stab wounds which caused his instantaneous death.”[3]

Assisted by their counsel,[4] they pleaded not guilty to the charge during their arraignment on December 3, 1998.[5] After trial on the merits, the RTC rendered its assailed judgment.

The Facts

Version of the Prosecution

The Office of the Solicitor General, in its Brief,[6] presents the factual antecedents of the case as follows:

“On December 31, 1997, around 5:00 in the afternoon, Gerry Francisco was on his way home when he saw Francisco Telib, Galicano (Nonoy) Retirado and Rustico Flamingo drinking at the AFP Housing, Barangay Silangan, in San Mateo, Rizal. When Nonoy Retirado saw Gerry Francisco approaching, he offered him a drink. Gerry Francisco declined the offer because he just came from work but promised to be back.

“Gerry Francisco returned around 6:00 in the evening and joined the group of Nonoy Retirado in their drinking spree. It was then that Nonoy Retirado showed them a letter written by his live-in partner, Amor Beruega. Nonoy Retirado asked Gerry Francisco to read the letter but Rustico Flamingo read the letter instead. The tenor of the letter pointed to appellant Rogelio Beruega as the real father of Grace, the supposed daughter of Nonoy Retirado and Amor Beruega.

“Nonoy Retirado then confided to them that because of that letter, he and Amor Beruega had an argument. He even uttered, ‘kung hindi siya ang makakapatay, siya ang mapapatay.’

“Shortly before 7:00 o’clock in the evening of the same day, Nonoy Retirado asked Francisco Telib to accompany him to the house of appellant Rogelio Beruega. After thirty (30) minutes, Nonoy Retirado and Francisco Telib returned. It did not take long, however, before Lenlen Beruega, sister of Amor Beruega, arrived to fetch Nonoy Retirado. According to Lenlen Beruega, appellant Rogelio Beruega wanted to see Nonoy Retirado.

“Nonoy Retirado then went to the house of appellant Rogelio Beruega. Unknown to Nonoy Retirado, he was closely followed by Gerry Francisco and Francisco Telib. When Francisco Telib and Gerry Francisco were near the house of appellants, they noticed a commotion inside. Francisco Telib and Gerry Francisco, who were about ten (10) armslength from the house of appellants, heard invectives being hurled. Gerry Francisco saw appellants Rogelio Beruega and Ramil Beruega, Amor Beruega and Nonoy Retirado because the interior of appellants’ house was lighted.

“Momentarily, Gerry Francisco saw appellants emerge from the house. Appellant Ramil Beruega positioned himself at the back of Nonoy Retirado and held Nonoy Retirado’s hands. While appellant Ramil Beruega was holding Nonoy Retirado’s hands, appellant Rogelio Retirado stabbed Nonoy Retirado on the chest. After the first thrust, Gerry Francisco and Francisco Telib ran away.

“Immediately, Gerry Francisco told Jay Castro, a neighbor, about the incident. However, he did not report to the police authorities because of fear. The following day, or on January 1, 1998, he learned of the death of Nonoy Retirado.

“Meanwhile, in the morning of January 1, 1998, Roque Retirado, father of the deceased Nonoy Retirado, was awakened by the news that his son was found dead near the barangay hall of Barangay Silangan. Thereafter, Roque Retirado, accompanied by Barangay Captain Alexander Laureta, went to the crime scene where, at the Barangay Hall, he saw the lifeless body of his son. He noticed that Nonoy Retirado suffered multiple stab wounds. He also noticed that the lifeless body of his son showed traces of having been washed of blood.

“As a consequence, an investigation was conducted. On January 1, 1998, around 8:00 o’clock in the morning, Francisco Telib was invited by the police authorities for questioning. However, he did not say anything about the incident which he and Gerry Francisco witnessed on December 31, 1997. Instead, as soon as he was allowed to go home, Francisco Telib left their place.

“Upon the request of the San Mateo Police, Dr. Tomas D. Suguitan, PNP Medico-Legal Officer, performed the autopsy on the cadaver of Nonoy Retirado on January 1, 1998. Dr. Saguitan testified that Nonoy Retirado suffered thirty-four (34) injuries, twenty-eight (28) of which were stab wounds located in the front and back portions of his body. Dr. Saguitan also opined that wounds nos. 3, 4, 5, 6, 7, 14, 15, 17, 18, 19 and 20 were fatal.

“Dr. Suguitan further testified that judging by the number of wounds sustained by Nonoy Retirado, the same could have been inflicted by two (2) or more individuals.

“Due to the death of Nonoy Retirado, his family incurred P65,000.00 representing the cost of the cemetery lot; P17,000.00 for the coffin and P5,000.00 for the wake and funeral service.”[7] (Citations omitted)

Version of the Defense

Appellants, on the other hand, proffer the defenses of denial and alibi. In their Brief,[8] they narrate their version of the facts thus:

“Accused-appellants interposed the defense of denial and alibi. On the one hand, accused-appellant Rogelio testified that on 31 December 1997, from 6:00 PM to 12:00 midnight, he was in [the] house together with his wife and children Rogelio, Jr., Amor and Lenlen. According to him, there was no unusual occasion that happened at that time. On the other hand, accused-appellant Ramil declared that on 31 December 1997, at around 6:00 PM, he, along with a Rudy Salvador, was in the house of a certain Dennis Silao roasting a pig’s head for New Year’s celebration. They stayed in that house till 9:00 PM. Afterwards, they dressed up and attended mass while he (Ramil) proceeded to the house of May Mendillo, his girlfriend, at Tierra Monte, Phase 4, Barangay Silangan, San Mateo, Rizal. He stayed in Mendillo’s house up to 3:00 AM the next day. Salvador and Mendillo corroborated the testimonies of accused-appellants.”[9]

The Trial Court’s Ruling

The trial court explained its ruling in these words:

“The testimony of the prosecution’s lone eyewitness, Gerry Francisco, is credible. His presence in the place proximate to the scene of the crime at the time of its occurrence, has not been negated. He has positively identified both herein accused as the persons who acted in unison in harming the victim. Furthermore, there is no showing that he had the motive to falsely testify against herein accused. It is settled that where there is no evidence and there is nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that the witness was not so actuated and his testimony is entitled to full faith and credit.

“The testimony of Gerry Francisco is, moreover, observably consistent with the facts as appearing in the records, as well as the testimony of the Medico-Legal Officer. The relative positions of the victim and the accused as testified to by Francisco find confirmation in the Medico-Legal officer’s testimony. Francisco alleged that the victim’s hands were held on the victim’s back by accused Ramil Beruega when accused Rogelio Beruega stabbed the victim on the chest. The doctor, on the other hand, testified that the assailants may have been in front or at the back of the victim or the victim may have been between two (2) assailants.

“Francisco’s apparent delay in executing a statement relative to the incident he witnessed does not affect his credibility, sufficient explanation has been given therefor. Fear for his life effectively prevented him from acting immediately. Initial reluctance to volunteer information regarding the crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness’ credibility.

“In the face of the positive and credible testimony of the Prosecution’s witness, herein accused’ defenses of denial and alibi are unavailing.

“Based on the eyewitness account, the killing was qualified by abuse of superior strength. Accused were not only superior in number than the victim who was alone, defenseless and apparently unarmed, but more importantly, accused took advantage of their superior strength when they first limited the victim’s means of defense by holding the victim’s hands at his back before the victim was stabbed. Moreover, the victim was assaulted in the place of the accused who necessarily then had ascendancy and advantage over the victim as they (accused) were acting in their turf, so to speak. Added to this is the fact that the victim was called to accused’s place where a heated argument ensued before the victim was stabbed to death. In the light of the circumstances obtaining, it is evident that there was deliberate intent on the part of the accused to take advantage of their superiority over the victim.”[10] (Citations omitted)

The Issue

In their Brief, appellants fault the court a quo with the following alleged errors:

“I.

The lower court gravely erred in holding accused-appellant[s] guilty beyond re[a]sonable doubt despite the unreliable, contradictory and unbelievable testimony of alleged eyewitness Gerry Francisco.

“II.

Assuming arguendo that prosecution witness Gerry Francisco’s testimony is true, the lower court gravely erred in appreciating against the accused-appellants the qualifying circumstance of abuse of superior strength, it clearly appearing that accused-appellants did not deliberately take advantage of their combined strength, much less conspired to consummate the offense.

“III.

The lower court gravely erred in not convicting accused-appellant Rogelio Beruega of homicide only and acquitting accused-appellant Ramil Beruega.”[11]

As the third issue is closely related to the first, these two issues will be taken up together in this Decision.

Hence, this appeal.[12]

The Court’s Ruling

The appeal has no merit.

Main Issue

Sufficiency of the Evidence

Appellants aver that the testimony of Prosecution Eyewitness Gerry Francisco is replete with irreconcilable contradictions that render his testimony unbelievable. Specifically, they point to his depiction of the incidents preceding the fatal stabbing of the victim. It was supposedly impossible for Appellant Ramil Beruega to have been holding both hands of the victim while at the same time pulling the hair of the former’s sister, Amor Beruega. Furthermore, the eyewitness’ claim of having seen Appellant Rogelio stab the victim once is contrary to the finding of 24 stab wounds on the latter’s body. Moreover, appellants argue that the credibility of Francisco is put in serious doubt by his alleged failure to include in his sworn statement or affidavit some material facts that were subsequently divulged during the trial. Finally, they harp on his apparent delay in reporting the stabbing incident to the authorities. We are not persuaded.

First, their claim that Appellant Ramil was holding the hair of Amor Beruega during the commotion is belied by the testimony of the eyewitness who revealed that it was actually the victim who was holding the hair of Amor, as follows:

“Q

What about this Amor Beruega, what did she do, if she did anything, when this Ramil Beruega was holding both hands of the deceased while Rogelio Beruega was stabbing Nonoy Retirado?

A

Nonoy Retirado was holding the hair of Amor, sir.”[13] (Italics supplied)

Second, the supposed discrepancy between the number of stab wounds found in the body of the victim and the single act of stabbing seen by the eyewitness can be explained sufficiently. The latter immediately ran after the

first stab wound had been inflicted on the former. Certainly, the eyewitness, who was already scampering away for fear of his own safety, could not have seen how the succeeding wounds were inflicted on the victim. The events that transpired before, during and after the stabbing incident, were related by Eyewitness Gerry Francisco in this wise:

“Q

Let us clarify that, Mr. Witness. You said a while ago that upon arrival of Mr. Nonoy Retirado in the house of his father-in-law, a commotion ensued, do you confirm that?

A

Yes, sir.

Q

Now, again, Mr. witness, who were the participants in that commotion, to clarify that?

A

Nonoy Retirado, Ramil Beruega, Rogelio Beruega and Amor Beruega, sir.

Q

Now, what was the subject matter of that commotion all about, if you know?”

A

Yes, sir, about the letter.

Q

And will you kindly tell this Hon. Court what kind of commotion was that?

A

They were exchanging words, sir.

Q

Who were exchanging words?

A

Nonoy Retirado, Ramil Beruega and Rogelio Beruega, sir.

Q

And will you kindly tell this Hon. Court how were these people exchanging words, were they shouting or whispering to each other or what?

A

They were shouting at each other, sir.

Q

So, they were uttering invectives at each other?

A

Yes, sir.

Q

And how far were you when you heard these people shouting and exchanging words against each other, Mr. witness?

A

More or less ten (10) arms length, sir.

Q

Now, how were you able to recognize these people, Nonoy Retirado, Ramil and Rogelio, and Amor Bereuga when I supposed that it was dark then?

A

Because they were outside and there was light, sir.

Q

Where is that light located, Mr. witness, was it located outside or inside the house of Rogelio Beruega?

A

Inside, sir.

Q

And where was that commotion taking place, was it inside or outside?

A

Inside the house, sir.

Q

And how were you able to recognize or identify those people involved in that shouting commotion, Mr.

witness?

A

I saw them inside going out, sir.

Q

And after that exchange of words between these people, Mr. witness, you stated a while ago that Ramil Beruega held the hand of Nonoy Retirado, do you confirm that?

A

Yes, sir.

Q

What hand was it, right or left?

A

Both hands placed at his back, sir.

Q

And you want to tell this Court, Mr. witness, that Ramil Beruega was positioned at the back of Nonoy Retirado holding Nonoy's both hands on his back, is that what you mean?

A

Yes, sir.

Q

What else transpired, Mr. witness?

A

When Ramil Beruega was holding the hands of Nonoy, they stabbed him, sir.

Q

Who stabbed Nonoy?

A

Rogelio, sir.

Q

What kind of instrument did Rogelio Beruega use in stabbing Nonoy?

A

I don't know what they used, sir.

Q

And how many times?

A

I don't know how many times, sir.

Q

But you are sure that Nonoy Retirado was stabbed more than once?

A

We don't know how many because when he was stabbed for the first time, we already ran, sir.”[14] (*Italics supplied*)

Appellants ask where the stabbing incident actually occurred. Suffice it to say that the eyewitness consistently stated that the heated argument began inside the house, but that the actual stabbing happened while appellants and the victim were already engaged in a scuffle outside. The fact that the body of the victim was found in a place about 500 meters away from the alleged scene of the crime is not at all a decisive circumstance to consider. Indeed, it would have been preposterous for appellants to just leave the body of the dead victim sprawled in front of their house. It was not unnatural for them to move the body to a place away from the scene of the crime.

The alleged delay in reporting the incident and in divulging to the authorities the identities of the perpetrators was sufficiently explained. Considering that what the eyewitness saw was a brazen and brutal manner in which the victim was killed, it is understandable why the former was at first hesitant to point to appellants as the malefactors. The fear and bewilderment experienced by the eyewitness upon seeing appellants' criminal propensity for violence may have initially silenced him.

In any case, the failure of witnesses to volunteer information to law enforcement officers does not necessarily impair their credibility. The Supreme Court understands the natural reticence and fear of some people to get involved in a criminal case.[15] It has observed their reluctance, if not aversion, to have any involvement in a criminal case.[16] Their initial hesitancy to volunteer information about a crime due to fear of reprisal is common. When adequately explained, such reluctance has been judicially declared as having no effect on credibility.[17]

Likewise, the eyewitness' supposed failure to include some material facts in his affidavit does not in any way diminish the veracity of his testimony. This Court has said that inconsistencies between testimonies given in open court and sworn statements given to investigators do not necessarily discredit witnesses, since *ex parte* affidavits are almost always incomplete.[18] As long as they are consistent in relating the principal occurrence and positively identifying the assailants, minor inconsistencies would not impair their credibility.[19]

Alibi is a defense that can easily be fabricated.[20] To serve as basis for acquittal, it must be established with clear and convincing evidence.[21] For it to prosper, the accused must prove not only that they were absent from the

scene of the crime at the time of its commission, but also that it was physically impossible for them to have been present then.[22]

In this case, the geographical proximity of both appellants to the scene of the crime at the time of its commission was clearly established by the prosecution. Appellant Ramil claims that at the time of the alleged murder he was in the house of his girlfriend. But he also testified that it was only about thirty (30) minutes away from the scene of the crime. On the other hand, Appellant Rogelio admits that he was in his house, which was right where the stabbing incident occurred. Clearly, appellants were not able to prove that it was physically impossible for them to be at the scene of the crime at the time of its commission.[23]

On the other hand, denial is intrinsically a weak defense. To merit credibility,[24] it must be supported by strong evidence of nonculpability. To be sure, it is a negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters.[25]

Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserve more credence and evidentiary weight.[26] Accordingly, the categorical statements of the prosecution witnesses must, perforce, prevail over the bare denials by the accused.[27] Where there is positive identification of the accused as the perpetrators of the crime, their denial and alibi cannot be sustained.[28] Thus, these defenses were correctly rejected by the trial court.[29]

Indeed, the testimony of a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge of murder.[30] Hence, the fact that the RTC relied on such testimony does not and should not at all affect the verdict of conviction.[31] Moreover, absent any indication of a sinister scheme to prevaricate, the prosecution witnesses' affirmative statements showing the culpability of the accused must be respected. Positive declarations subordinate disclaimers emanating from the defense.[32]

This Court accords the highest respect to the lower court's evaluation of the testimonies of eyewitnesses.[33] Thus, its assessment is given great weight and even attain finality on appeal, unless there was utter failure to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case.[34]

Second Issue:

Abuse of Superior Strength

Appellants aver that the RTC erred in appreciating against them the qualifying circumstance of abuse of superior strength. They argue that the prosecution failed to establish that the former purposely took advantage of their superior strength to consummate the offense. We are not convinced.

It is difficult to believe that the purpose of Appellant Ramil in holding the hands of the victim was merely to soothe the searing temper of the latter and of the former's father. Had appellant really intended to prevent a physical and potentially violent altercation between the supposed protagonists, it would have been more logical and practical for him to hold down his father who was armed with a knife. At the very least, Ramil should have positioned himself between the two. Verily, his clear and unmistakable act of restraining the unarmed victim and restricting the latter's means of defense against a possible attack from the old man can only be interpreted as a strategy specifically adopted by appellants. Evidently, their purpose was to ensure the killing of the victim and to thwart any opportunity for him to defend himself. Furthermore, the number of stab wounds inflicted on him reflects the excessive force used by appellants in the commission of the crime.

Indeed, to appreciate abuse of superior strength, there must be shown a deliberate intent on the part of the malefactors to take advantage of their greater number. They must have notoriously selected and made use of

superior strength in the commission of the crime.[35] To take advantage of superior strength is to use excessive force that is out of proportion to the means for self-defense available to the person attacked; thus, the prosecution must clearly show the offenders' deliberate intent to do so.[36] Where armed assailants seize upon their greater number and superior power to overwhelm an unarmed victim, the aggression must be considered as having been attended with abuse of superior strength.[37]

Considering the manner in which appellants perpetrated the killing, we find that abuse of superior strength was indeed present in the commission of the offense.

WHEREFORE, the appeal is hereby DENIED and the assailed Decision AFFIRMED. Costs against appellants.

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

[1] Rollo, pp. 22-29; penned by Judge Jose C. Reyes Jr.

[2] Assailed Decision, pp. 7-8; rollo, pp. 28-29; records, pp. 162-163.

[3] Rollo, pp. 11-12; records, pp. 1-2; signed by Asst. Provincial Prosecutor Florante R. Ramolete.

[4] Atty. Regino Garillo.

[5] Order dated December 3, 1998; records, p. 26.

[6] Rollo, pp. 87-123. This was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Amparo M. Cabotaje-Tang and Associate Solicitor Ma. Lilia O. De La Rea.

[7] Appellee's Brief, pp. 4-9; rollo, pp. 93-98.

[8] Rollo, pp. 44-60. This was signed by Attys. Bartolome P. Reus and Paul A. Flor of the Public Attorney's Office.

[9] Appellant's Brief, p. 5; rollo, p. 50.

[10] Rollo, pp. 27-28; records, 162-163.

[11] Appellant's Brief, *supra*, pp. 46-47.

[12] This case was deemed submitted for resolution on August 6, 2001, upon receipt by this Court of Appellee's Brief. The filing of a Reply Brief was deemed waived, as none had been submitted within the reglementary period.

[13] TSN, March 10, 1999, p. 9.

[14] TSN, March 10, 1999, pp. 7-8.

[15] *People v. Guillermo*, 302 SCRA 257, January 28, 1999.

[16] *People v. Lotoc*, 307 SCRA 471, May 19, 1999.

[17] *People v. Rada*, 308 SCRA 191, June 10, 1999.

[18] *People v. Banela*, 301 SCRA 84, January 18, 1999.

[19] *People v. Badon*, 308 SCRA 175, June 10, 1999.

[20] *People v. Bation*, 305 SCRA 253, March 25, 1999; *People v. Naguita*, 313 SCRA 292, August 30, 1999;

People v. Mosqueda, 313 SCRA 694, September 3, 1999.

[21] People v. Javier, 311 SCRA 122, July 26, 1999.

[22] People v. Villanueva, 302 SCRA 380, January 29, 1999.

[23] People v. Apelado, 316 SCRA 422, October 11, 1999.

[24] People v. Sagun, 303 SCRA 382, February 19, 1999; People v. Maglente, 306 SCRA 546, April 30, 1999; People v. Acuno, 313 SCRA 667, September 3, 1999.

[25] People v. Acala, 307 SCRA 330, May 19, 1999.

[26] Tecson v. Sandiganbayan, 318 SCRA 80, November 16, 1999.

[27] People v. Hernandez, 304 SCRA 186, March 4, 1999.

[28] People v. Macahia, 307 SCRA 404, May 19, 1999.

[29] People vs. Ortiz, 316 SCRA 407, October 8, 1999.

[30] People v. Gonzales, 311 SCRA 547, July 28, 1999; People v. Villablanca, 316 SCRA 13, October 1, 1999; People v. Garcia, 313 SCRA 279, August 30, 1999; People v. Ocumen, 319 SCRA 539, December 2, 1999; People v. Barellano, 319 SCRA 567, December 2, 1999.

[31] People v. Sanchez, 313 SCRA 254, August 27, 1999.

[32] People v. Antonio, 303 SCRA 414, February 19, 1999.

[33] Ibid., p. 427, per Mendoza, J.

[34] People v. Batidor, 303 SCRA 335, February 18, 1999.

[35] People v. Langres, 316 SCRA 769, October 13, 1999.

[36] People v. Agsunod Jr. 306 SCRA 612, May 3, 1999.

[37] People v. Gallo, 318 SCRA 157, November 16, 1999.

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