

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO BORBON Y BOTER, APPELLANT.

G.R. No. 143085. March 10, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 95-145714, convicting appellant Ricardo Borbon of murder, sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay damages to the victim as follows: P150,000.00 as actual damages, P250,000.00 as moral damages, and P50,000.00 with interest at 6% per annum by way of indemnity for the loss of the victim's life.

An Information against the appellant was filed on October 12, 1995, which reads as follows:

That on or about June 17, 1995, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditations, attack, assault and use personal violence upon one GREGORIO SUCK by then and there stabbing him with a kitchen knife and hitting his abdomen, thereby inflicting upon him mortal stab wound which was the direct and immediate cause of his death thereafter.[2]

Upon arraignment, the appellant entered a plea of not guilty. Trial of the case ensued.

The Evidence for the Prosecution[3]

Between 11:00 p.m. and 12:00 midnight of June 16, 1995, Jaime Tabilangan was in front of the house of a certain Aling Pet Pingol in San Lorenzo St., Tondo, Manila. He was seated at a bench and was conversing with the appellant and Christina David, the appellant's niece. The appellant was seated beside Jaime. The appellant reeked of liquor and appeared to be drunk.

Amado Vicmudo, Jr. had just come from watching a basketball game. He was on his way home, accompanied by Gregorio Suck and Richard Tabilangan. The group stopped in front of Aling Pet's house. Christina left upon the arrival of Gregorio, Amado and Richard. Amado then sat beside Jaime on the bench, while Gregorio and Richard remained standing. The group began talking about the basketball game that Amado had just seen. The appellant, who was seated beside Jaime, did not take part in the conversation.

Suddenly, the appellant frisked Jaime's waist and uttered that he "wanted to kill." Jaime became frightened and immediately went to his house, which was just adjacent to Aling Pet's house. Richard, Jaime's brother, likewise went home. Jaime drank about two glasses of water, which took about three to five minutes, as soon as he reached his house.

Meanwhile, Amado and Gregorio continued their conversation while the appellant remained seated at the bench. Minutes later, the appellant stood up and went inside the house of Aling Pet. Amado and Gregorio remained outside, still conversing with each other. About a minute later, the appellant, carrying two knives, emerged from

the house. Immediately and without warning, he stabbed Gregorio at the right side of the belly with one of the knives. Amado was shocked at what transpired, but managed to run away towards his house, which was not far away.

Jaime returned and saw Gregorio and the appellant. He asked Gregorio what happened. Gregorio replied not to come near him as he was stabbed by the appellant. The appellant, still holding a knife, turned his attention to Jaime and uttered, "O, ikaw!" The appellant then fled, while Gregorio tried to pursue him. Weakened by his injury, Gregorio fell down on his right knee. With the appellant gone, Jaime assisted Gregorio. Amado, likewise, returned and assisted Gregorio. Jaime and Amado brought Gregorio to the house of the Allan Suck, Gregorio's brother, not far from the place of the incident.

When Allan heard the commotion outside of his house, he went out and saw Jaime and Amado carrying his brother, Gregorio. Allan noticed that Gregorio was bleeding from a stab wound in the stomach. Jaime and Amado informed Allan that Gregorio had been stabbed by the appellant. Allan then asked his brother, Gregorio, what happened. Gregorio replied "Allan, nasaksak ako ni Edgardo Borbon" (Allan, I was stabbed by Edgardo Borbon). Allan, Amado and Jaime then hailed a taxi to bring the victim to a hospital. Inside the taxi, Gregorio said nothing more, as he was already weak and bleeding profusely. The group arrived at the Metropolitan Hospital in Tondo, Manila, where Gregorio was immediately operated. After the operation, Gregorio was placed in the Intensive Care Unit (ICU) where he went on comatose.

Gregorio died on June 19, 1995.[4] Dr. Manuel O. Lagonera, Medico-Legal Officer of the PNP, conducted an autopsy on the cadaver of the victim which yielded the following findings:

EXTERNAL FINDINGS:

- Abrasion, outer angle of the mouth, right, measuring 1.5 x 0.8 cms.
- Exploratory laparotomy incision, mid-abdomen, measuring 27 cms.
- Drainage incisions, right upper quadrant, abdomen.
- Stab wound, right upper quadrant, abdomen, 42 inches from heel, 8 cms. from anterior midline, measuring 3 x 0.6 cms., directed slightly upwards, backwards towards midline, piercing the right lobe of the liver, right kidney, transecting blood vessels of the mesentery and omentum of the transverse colon and head of the pancreas.

Depth of the wound — 13 cms.

INTERNAL FINDINGS:

- Injured tissues and organs were surgically repaired. Right nephrectomy was performed.
- Patchy and confluent consolidations were noted on both lungs.

CAUSE OF DEATH:

STAB WOUND, RIGHT SUB-COSTAL REGION.[5]

According to Dr. Lagonera, the immediate cause of death was pneumonia bilateral secondary to stab wound in the right sub-costal region.

The Evidence For The Defense

The appellant denied the charge against him. He testified that he was a resident of Plaridel, Bulacan since 1991, and lived with his mother. He worked in a rice mill.

The appellant testified that he was once ganged upon by Gregorio and Allan. Allan threw a bottle and hit the appellant on the head, and the wound left a scar. The appellant filed a case against the two, but the same was withdrawn when the matter was settled amicably.

The appellant denied that he went to Manila on June 17, 1995. He maintained that he did not know anything about the death of Gregorio Suck. He averred that he traveled to Manila only about once a month, to give his daughter her allowance for her studies. The travel time from Plaridel, Bulacan to Manila, would take about an hour to an hour and a half, depending on the volume of traffic.

On April 5, 2000, the trial court rendered a decision convicting the appellant of murder, the dispositive portion of which reads as follows:

WHEREFORE, the Accused, Edgardo Borbon y Boter, is hereby convicted of murder under Article 248 of the Revised Penal Code, attended by the mitigating circumstance of intoxication, and sentenced to suffer reclusion perpetua with all the accessory penalties provided by law, and to pay the costs.

On the civil liability of the accused, he is further sentenced to pay the private complainant, Rosary Roxas Suck, actual and moral damages in the respective sums of P150,000.00 and P250,000.00, plus indemnity for the loss of the victim's life in the sum of P50,000.00 with interest thereon at the legal rate of 6% per annum from today until paid.

SO ORDERED.[6]

Appealing to this Court, the appellant raises the following errors:

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

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT IN THE CASE AT BAR.[7]

Anent the first assigned error, the appellant points out that the testimonies of the prosecution witnesses were inconsistent. First, although Jaime testified that the appellant said he wanted to kill and frisked Jaime in the presence of other people, this was not mentioned in the testimony of Amado, who was also present at the time. Second, Allan Suck testified that when he saw his brother, Gregorio, bleeding, he went out of the house to help the latter. This was, however, not mentioned in the respective testimonies of Amado and Jaime. Third, Jaime testified that when he was frisked by the appellant, he went home at around 11:00 p.m., but on cross-examination stated that when he went out of the house and saw Gregorio already stabbed, it was already past 12:00 midnight. The appellant stresses that the above inconsistencies in the testimonies of the prosecution witnesses cast a doubt on his guilt.

The appellant's contention is bereft of merit.

The matters pointed to by the appellant are merely minor and trivial, and do not pertain to the actual act constitutive of the offense charged. They do not affect the substance of their declaration, nor the veracity or weight of the witnesses' testimonies. Such minor inconsistencies even have the effect of enhancing the credibility of the witnesses, as they remove any suspicion that the testimonies of the witnesses were coached or rehearsed.[8] In *People v. Albarido*, [9] it was declared:

Indeed, the fact that the statements of the two prosecution witnesses differ on some minor details, does not in any way affect their credibility. This is in accord with ordinary human experience that persons who witness an

event perceive the same from their respective points of reference. Therefore, almost always, they have different accounts of how it happened. Certainly, we cannot expect the testimonies of witnesses to a crime to be consistent in all aspects because different persons have different impressions and recollections of the same incident. ...

The fact is that Amado categorically identified the appellant as the one who stabbed the victim. He described the manner how the stabbing occurred, thus:

Q:

After the companions of Edgardo Borbon left Edgardo Borbon, what happened?

A:

I and Borbon were seated on the wooden bench while Gregorio standing (sic) in front of me.

Q:

While you were on (sic) that position, what happened?

A:

I noticed Edgardo Borbon stood up.

Q:

What happened after Edgardo Borbon stood up?

A:

He entered the house of Aling Pet.

Q:

After Edgardo Borbon entered the house of Aling Pet what happened? next? (sic)

A:

While he was inside the house, Gregorio and I conversed with each other and when Edgardo Borbon came out of the house, he stabbed Greg.

Q:

After Edgardo Borbon entered the house of Aling Pet what happened? next? (sic)

A:

While he was inside the house, Gregorio and I conversed with each other and when Edgardo Borbon came out of the house, he stabbed Greg.

Q:

Did you see Edgardo Borbon when he emerged from that house of Aling Pet?

A:

My back was turned to the house of Aling Pet, so I did not see Edgardo Borbon when he came out from the house, I saw him only when he stabbed Greg.

Q:

What particular [part] of the body of Greh (sic) was hit when he was stabbed?

A:

Witness pointing to the right side of his stomach.

Q:

What was the position of the victim Gregorio Suck when he was stabbed by the accused, Edgardo Borbon?

A:

After he was stabbed, he moved backward and at the same time, he was holding the right side of his stomach. (sic).

Q:

How many times Gregorio Suck was (sic) stabbed by Edgardo Borbon?

A:

Once, sir.

Q:

Where did Edgardo Borbon proceed after he was stabbed (sic) by the victim? once? (sic)

A:

He simply moved backward and he was about to draw his other knife, it was at that point that I ran away.[10]

The appellant put up the twin defenses of alibi and denial, asserting that at the time the victim was stabbed, he was in Plaridel, Bulacan. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed; he must demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission.[11] In this case, the appellant himself admitted that the travel from Plaridel, Bulacan to Tondo, Manila, would take only about an hour to an hour and a half. This negates the physical impossibility of him travelling from Plaridel, Bulacan to Tondo, Manila, at the time the stabbing incident took place. The defense presented only the appellant as its lone witness and never presented other witnesses to, at

the very least, corroborate the theory of alibi.

It is well settled that a bare and unsubstantiated denial, being merely self-serving, is itself hardly given credence.[12] Alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove.[13] Furthermore, alibi and denial cannot prevail over the positive and unequivocal identification by an eyewitness.[14] Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the twin defenses of denial and alibi.[15]

In the light of the positive and categorical identification by Amado that the appellant was the perpetrator of the crime charged, the appellant's defense cannot prosper.

From the foregoing, the guilt of the appellant was proved beyond reasonable doubt.

Anent the second assignment of error, the appellant asserts that the court a quo erred when it considered that the qualifying circumstances of treachery and evident premeditation attended the killing of the victim.

The appellant posits that treachery was not present, as the victim was forewarned of the attack. As testified to by Jaime, the appellant, in the presence of other people, frisked Jaime's waist and uttered that "he wanted to kill," clearly sending a message that the appellant might harm someone. Hence, the appellant's attack on the victim should not be considered as sudden and unexpected. The appellant adds that treachery was not present, since his meeting with Gregorio was only accidental and the appellant had no time to reflect on the method of executing the crime.

Treachery requires the concurrence of two conditions: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[16] The essence of treachery is the sudden and unexpected attack by the aggressor on the 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.[17]

In this case, the appellant stood up from the bench and went inside the house of Aling Pet, while Gregorio and Amado remained outside. About a minute later, the appellant emerged, carrying two knives, and immediately stabbed Gregorio without warning. The attack was sudden and unexpected. The fact that the appellant brought two knives with him clearly indicated that he made a deliberate and conscious adoption of the means to kill Gregorio. He wanted to insure the execution of the killing, without risk to himself, not to afford the victim of putting up any means of defense.[18]

From the foregoing, treachery or alevosia has been sufficiently established.

Anent the existence of evident premeditation, the appellant posits that for evident premeditation to be appreciated, the following requisites must concur: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[19] The appellant stressed that the prosecution failed to prove the existence of the aforesaid requisites. The appellant added that the meeting between him and Gregorio was merely accidental; hence, there could be no pre-determined or pre-conceived plan on his part to attack Gregorio.

We agree with the appellant's pose. The essence of evident premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[20] It must be based on external acts which must be notorious, manifest and evident – not merely suspecting – indicating deliberate planning.[21] Evident premeditation, like

other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.[22]

It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[23] The prosecution in this case failed to show when the appellant decided to commit the crime and that a sufficient amount of time elapsed for him to reflect upon his resolution to kill Gregorio. Where there is no evidence as to how and when the plan to kill was decided and what time had elapsed before it was carried out, evident premeditation cannot be considered as an aggravating circumstance.[24]

Nevertheless, even if the prosecution failed to prove the existence of evident premeditation, the killing of Gregorio is still classified as murder, as it was attended with the qualifying circumstance of treachery.

In its decision, the court a quo appreciated the mitigating circumstance of intoxication in favor of the appellant. This Court, however, disagrees with such finding. Under the third paragraph of Article 15 of the Revised Penal Code, intoxication is considered as an alternative circumstance, it may either be taken as an aggravating or a mitigating circumstance.[25] For intoxication to be considered as a mitigating circumstance, the following conditions must be present: (1) the same is not habitual or is not subsequent to a plan of the commission of a felony; otherwise, it is aggravating if it is habitual and intentional; and (2) the consumption of alcoholic drinks was in such quantity as to blur the accused's reason and deprive him of certain degree of control.[26] In *People v. Ventura*,[27] this Court had the occasion to state, thus:

Intoxication or drunkenness is mitigating if not habitual nor intentional, and it must be indubitably proved (Art. 15, Revised Penal Code; *People v. Camano*, 115 SCRA 688 [1982]). Accused-appellant is not entitled to the mitigating circumstance of intoxication merely on the declaration of the prosecution witness that appellant was drunk (Exh. D, Original Record, page 151). Accused-appellant must prove that such intoxication is not habitual nor intentional. This he failed to do, for the reason that the accused-appellant's defense was that of alibi.[28]

Jaime testified that he noticed that the appellant was drunk as his movement was swaying and he smelled of liquor.[29] Nothing else was mentioned about the appellant's drunkenness during the incident. For his part, the appellant presented nothing to prove that he was, indeed, not drunk. Having failed to prove that intoxication was neither habitual nor intentional, the mitigating circumstance of intoxication cannot be appreciated against or in favor of the appellant.

The imposable penalty for murder is reclusion perpetua to death,[30] an indivisible penalty, which is not affected by a mitigating circumstance.

With respect to the amount of damages, the court a quo awarded the amount of P150,000.00 as actual damages, P250,000.00 as moral damages, and P50,000.00 as indemnity for the loss of the victim's life with interest at 6% per annum from the date of the decision until fully paid.

Rowena Manalansang, the victim's sister-in-law, testified to prove the amount incurred for the hospitalization and burial expenses of Gregorio. Based on her computation, the total amount incurred was P150,000.00.[31] However, based on said amount, only a total amount of P124,388.55 was supported by receipts. Hence, we only grant the amount of P124,388.55 by way of actual damages.

The award of moral damages, likewise, needs to be modified, as the amount of P250,000.00 granted by the court a quo is deemed excessive. Based on prevailing jurisprudence, the amount of P50,000.00 by way of moral damages is sufficient. In *People v. Galvez*,[32] this Court stressed that the purpose of the award of moral damages is not to

enrich the heirs of the victim but to compensate them for the injuries to their feelings.

The amount of P50,000.00 granted by the court a quo by way of indemnity is commensurate, based on prevailing jurisprudence.[33]

IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 95-145714 is AFFIRMED WITH MODIFICATION. The appellant Edgardo Borbon y Boter is found GUILTY beyond reasonable doubt of murder under Article 248 of the Revised Penal Code and is sentenced to the penalty of reclusion perpetua. The appellant is ordered to pay to the heirs of the victim Gregorio Suck the amount of P124,388.55 as actual damages, P50,000.00 as moral damages, and P50,000.00 by way of indemnity for the death of the victim.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.
Puno, (Chairman), J., on leave.

[1] Penned by Judge Perfecto A.S. Laguio, Jr.

[2] Records, p. 1.

[3] The prosecution presented six witnesses, namely, Allan Suck, Jaime Tabilangan, Amado Vicmudo, Jr., Rowena Manalansang, Dr. Manuel Lagonera and SPO2 Ruben Roque.

[4] Exhibit "H."

[5] Exhibit "E."

[6] Records, p. 131.

[7] Rollo, p. 34.

[8] *People v. Dacara*, 368 SCRA 278 (2001).

[9] 368 SCRA 194 (2001).

[10] TSN, 21 October 1998, pp. 3-4.

[11] *People v. Manayan*, 368 SCRA 300 (2001).

[12] *People v. Villaver*, 370 SCRA 618 (2001).

[13] *People v. Villanueva*, 394 SCRA 93 (2002).

[14] *People v. Aliben*, G.R. No. 140404, February 27, 2003.

[15] *People v. Manayan*, *supra*.

[16] *People v. Guzman*, 372 SCRA 344 (2001).

[17] *People v. Cabote*, 369 SCRA 65 (2001).

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

[19] *People v. Cheng*, 279 SCRA 129 (1997).

[20] *People v. Cabote*, supra.

[21] *People v. Tan*, 359 SCRA 283 (2001).

[22] *People v. Aytalin*, 359 SCRA 325 (2001).

[23] *People v. Cabote*, supra.

[24] *People v. Galvez*, 355 SCRA 246 (2001).

[25] Art. 15. Their concept. –

...

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

[26] *People v. Muerong*, 360 SCRA 566 (2001).

[27] 208 SCRA 55 (1992).

[28] *Id.* at 61-62.

[29] TSN, 2 September 1998, p. 5.

[30] Article 248, Revised Penal Code.

[31] Exhibit “D.”

[32] 374 SCRA 10 (2002).

[33] *People v. Callet*, 382 SCRA 43 (2002).

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