PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL RUBARES Y CAROLINO, ACCUSED-APPELLANT.

G.R. No. 143127. November 29, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 109, Pasay City, finding accused-appellant Raul Rubares guilty of murder for the killing of Ariel Atienza on March 6, 1999 and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim civil indemnity in the amount of P50,000.00.

The information against accused-appellant charged -

> That on or about the 5th day of March 1999, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Raul Rubares y Carolino, with intent to kill, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously stab one Ariel Atienza thereby inflicting upon the latter [a] mortal wound which caused his death.
>
> Contrary to law.[2]

Upon arraignment, accused-appellant entered a plea of not guilty, whereupon he was tried.

The prosecution presented six witnesses, namely, Daniel Macawili, Armando Llanes, Imelda Malaloan, Dr. Audie Czar Cipriano, Dr. Wilfredo Tierra, and Police Inspector Aurelio Binamira. Their testimonies are as follows:

Daniel Macawili, a resident of 704 Apelo Cruz St. Pasay City and a fruit vendor, testified that on March 6, 1999, at around 3:00 a.m., he went to the Seven Eatery[3] near the Philtranco Bus Station on EDSA, Pasay City to get a tricycle. He later joined a group of men playing cara y cruz and stayed there for some time. At around 6:30 a.m., accused-appellant arrived. Daniel knew accused-appellant to be a snatcher at the Philtranco Bus Station. At first, accused-appellant was behind him, but, after a while, accused-appellant approached Ariel Atienza. Ariel, a tricycle driver and also a resident of 704 Apelo Cruz St., Pasay City,[4] was in his tricycle, apparently waiting for passengers. Without any warning, accused-appellant drew an ice pick, with a blade measuring more or less six inches ("isang dangkal"), and stabbed Ariel once on the right side of the lower back. Accused-appellant then ran away. Ariel also ran a short distance and was later taken to the Pasay City General Hospital on a tricycle. Daniel claimed he witnessed the whole incident because he was only a meter away from accused-appellant and Ariel.[5]

Armando Llanes, a pedicab driver and also a resident of 704 Apelo Cruz St., Pasay City, testified that on March 6, 1999, at around 6:00 a.m., he was in front of the Seven Eatery near the Philtranco Bus Terminal. He was playing cara y cruz with a group of 20 men, more or less. He said he noticed that accused-appellant, who was also a resident of 704 Apelo Cruz St., arrived and went near their group. After a few minutes, he heard a certain Baba shout, "Pare, may tama ka!" ("Pal, you've been wounded!") He saw that the person addressed to was Ariel Atienza, who was standing near his tricycle with a stab wound on his side. Baba asked Ariel, "Pare, sino ang

tumira sa iyo? ("Pal, who stabbed you?"), to which Ariel replied, "Si Raul." ("It was Raul.") Ariel described the appearance of his assailant. According to Armando, he did not see accused-appellant anymore at that time. He and others who were also playing cara y cruz helped Ariel board a tricycle which took him to the hospital. Armando said he later learned that Ariel died.[6]

Imelda Malaloan, live-in partner of Ariel Atienza, testified that on March 6, 1999, at around 8:00 a.m., she was in their house at 704 Apelo Cruz St., Pasay City when Jacklyn Apolo came and told her that Ariel had been stabbed. She immediately proceeded to the emergency room of the Pasay City General Hospital, where she found Ariel still alive. Ariel said that accused-appellant had stabbed him. Not long after, Ariel died while undergoing operation.[7]

Dr. Audie Czar Cipriano, of the Pasay City General Hospital, testified that he examined Ariel Atienza at around 6:40 a.m. on March 6, 1999. According to him, Ariel suffered a stab wound on the right side of his chest and was gasping for breath. Ariel registered a blood pressure of 0/0, a cardiac rate of 0/0, and a respiratory pulse rate of three per minute. He found a decrease of breath sound in his right chest, signifying that there was a massive hemothorax or bleeding. For this reason, he inserted a closed tube thoracostomy[8] at the right side of Ariel's chest, and a massive volume of blood flowed from the tube. Intravenous fluid was then administered to Ariel. However, his vital signs did not improve and his condition instead deteriorated. While undergoing treatment, Ariel died. The immediate cause of his death was massive blood loss by reason of a linear stab wound of 1.5 cms. located at the 9th intercostal space, posterior axillary line, which could have possibly been caused by a sharp-pointed instrument.[9]

Dr. Wilfredo Tierra, medico-legal officer of the National Bureau of Investigation, also testified. He said that on March 6, 1999, he received from Imelda Malaloan a request for autopsy[10] on the body of her common-law husband, Ariel Atienza. Dr. Tierra, therefore, proceeded to the Pasay City General Hospital and conducted an autopsy on the cadaver of Ariel Atienza. The autopsy revealed that the cause of Ariel's death was a stab wound measuring 1.5 cms. at the right side of his lower back which penetrated his thoracic cavity and the right hemi-diaphragm and lacerated the right lobe of his liver. According to Dr. Tierra, the wound could have been caused by a sharp-edged or sharp-pointed instrument, possibly a knife, but not an ice pick, and could have been inflicted on the back of the victim by the assailant.[11]

On cross-examination, Dr. Tierra opined that it was possible that both the assailant and the victim were standing when the wound was inflicted. He further stated that if the assailant was right-handed, he could have stabbed the victim while the latter was turned against him, whereas if he was left-handed, he could have inflicted the wound while he was at the right side or in front of the victim.[12]

Police Inspector Aurelio Binamira, of the Investigation Division of the Pasay City Police Station, testified that while he was on duty, at 7:00 p.m. of March 19, 1999, Barangay Kagawad Romy Flores arrived to report that accused-appellant was in the custody of the police of General Mariano Alvarez in Cavite. Upon proper representation, accused-appellant was turned over to the custody of the Pasay City Police.[13]

On the other hand, the defense presented accused-appellant himself and his live-in partner, Corazon Mileton.

Accused-appellant testified that he lived in the same area referred to as 704 Apelo Cruz St., Pasay City, where the prosecution witnesses likewise resided. He and his common-law wife, Corazon Mileton, had a son named Raulito Rubares. Corazon sold tocino and longganisa, while accused-appellant occasionally took painting jobs.

Accused-appellant claimed that he and his family went to bed at around 8:00 p.m. of March 5, 1999. He woke up the following day at around 8:00 a.m. because he was roused from sleep by Corazon, who said that two men, the

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barangay captain and Toto Barquilla, Ariel Atienza's brother, were looking for him. However, he said, when he went to meet the visitors, he found that they had gone. He was told by Corazon that there had been a killing outside. At around 7:00 p.m. of the same date, accused-appellant said, Gido Hermosa came to their house and told him that their friend, Ramon "Bebot" Alcones, had been killed by a relative of Ariel Atienza, to avenge the latter's death. Accused-appellant said he became frightened and fled with his family to Cavite, where they stayed in the house of Corazon's aunt.

Accused-appellant said that that on March 18, 1999, he learned from a barangay official that four armed men were looking for him. The four, one of whom was Toto Barquilla, were arrested and detained at the General Mariano Alvarez Police Station.[14] Accused-appellant said he was "invited" over to the police station and later turned over on March 20, 1999 to SPO4 Aurelio Binamira of the Pasay City Police Station. Accused-appellant claimed that at the police station, Imelda Malaloan, Daniel Macawili, and Armando Llanes were told by Binamira to point to him (accused-appellant) as the person who killed Ariel. The three executed their respective sworn statements implicating accused-appellant in the killing of Ariel Atienza. Accused-appellant claimed that he met Daniel Macawili and Armando Llanes for the first time only at the Pasay City Police Station. He claimed that Toto Barquilla bore a grudge against him because he refused to join the former in selling drugs.[15]

Corazon Mileton, accused-appellant's live-in partner, testified that she and accused-appellant went to bed at around 8:00 p.m. of March 5, 1999 and woke up at around 8:00 a.m. the next day. She said that while they were still asleep, someone came knocking on their door. When she opened the door, she saw Toto Barquilla and a barangay tanod, whose name she did not know. The two men were looking for accused-appellant. Corazon said she roused accused-appellant from his sleep and told him about the visitors. Corazon said that in the afternoon she heard in the neighborhood that Ariel Atienza had been killed by a certain Raul. At around 6:00 p.m., Gido Hermosa went to their house and said that one of their friends, Ramon Aliones,[16] had been shot to death and warned accused-appellant that he would be the next to be killed by Ariel's relatives. For this reason, Corazon said, she and her family fled to General Mariano Alvarez, Cavite and stayed with her aunt until March 18, 1999, when a barangay official came and took them to the barangay outpost. Accused-appellant was arrested and told that there was a complaint against him. Accused-appellant was later turned over to the Pasay City Police Station. Corazon denied that accused-appellant killed Ariel Atienza because her husband was still sleeping with her at the time of the incident.[17]

On April 18, 2000, the trial court rendered its decision, the dispositive portion of which reads:

> In view of all the foregoing, the Court opines that the prosecution has proven the guilt of the accused Raul Rubares y Carolino for Murder as defined and penalized under Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659, which is herein below quoted:
> Art. 248. MURDER. - Any persons who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

There being no mitigating circumstance present, the Court hereby sentences accused, Raul Rubares y Carolino, to Reclusion Perpetua and for the accused to pay civil indemnity of fifty thousand pesos (P50,000.000) to the heirs of the victim.

SO ORDERED.[18]

Hence, this appeal. Accused-appellant contends that -

> - THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE ALLEGED POSITIVE IDENTIFICATION OF THE ACCUSED BY THE PROSECUTION WITNESSES DESPITE THEIR GLARING INCONSISTENCIES.
>
> - THE COURT A QUO ERRED IN NOT GIVING CREDENCE TO THE ACCUSED'S ALIBI.[19]

The appeal has no merit.

First. Accused-appellant assails the eyewitness testimony of Daniel Macawili on account of alleged inconsistencies and contradictions. He claims that Daniel could not have witnessed the stabbing of Ariel Atienza because he (Daniel) testified that accused-appellant was behind him at the time of the incident.

This is misleading. Although Daniel said that accused-appellant was behind him at the Seven Eatery near the Philtranco Bus Station on EDSA, Pasay City on March 6, 1999, Daniel also testified that accused-appellant later approached Ariel, who was inside his parked tricycle, and stabbed the latter.

Accused-appellant points out discrepancies between the testimonies of Daniel and NBI Medico-Legal Officer Dr. Wilfredo Tierra with respect to the weapon used in stabbing Ariel and the position of Ariel at the time he was stabbed. Accused-appellant claims that Daniel's statement that accused-appellant stabbed Ariel with an ice pick while the latter was seated on the driver's seat of his tricycle contradicts the expert opinion of Dr. Tierra that the instrument used in killing the victim could possibly have been a knife, but not an ice pick, and that, based on the location of the wound, the assailant and the victim were both standing when the wound was inflicted.

Whether or not the instrument used in the killing was an ice pick is immaterial. What is important is that both doctors who examined Ariel testified that the fatal wound was caused by a sharp-pointed and sharp-edged object. Dr. Tierra's opinion as to the position of the victim and his assailant does not rule out the possibility that Ariel was actually seated when he was attacked, considering the medico-legal finding that the stab wound penetrated his thoracic cavity and right hemi-diaphragm, lacerating the right lobe of his liver. It is noteworthy that Dr. Audie Czar Cipriano of the Pasay City General Hospital testified that he found a wound on the right side of Ariel's chest. The direction of the wound signifies that the weapon was thrust upward from the lower right side of Ariel's back, thus lacerating the right lobe of his liver and even reaching the victim's chest. The alleged inconsistencies are trivial and do not in any way affect the disposition of the case. Instead of undermining the credibility of Daniel, they show that he was an unrehearsed witness.[20]

Accused-appellant likewise contends that the trial court should not have given probative value to the testimony of Armando Llanes with respect to his identification of accused-appellant as the culprit in view of Armando's admission that he did not actually witness the stabbing incident and merely testified based on what he had heard.

The contention is untenable. Positive identification requires essentially proof of identity and not per se an eyewitness account of the very act of committing the crime. Such identification forms part of circumstantial evidence which, when taken together with other pieces of evidence constituting an unbroken chain, leads to a fair and reasonable conclusion that accused-appellant is the author of the crime to the exclusion of the others.[21] In this case, the following circumstances support the conclusion that accused-appellant was indeed the one who stabbed Ariel, to wit: (1) while playing cara y cruz near the Seven Eatery, Armando saw accused-appellant arrive at the place; (2) Armando saw Ariel with a stab wound on the lower right side of his back; (3) when asked who stabbed him, Ariel replied it was Raul; (4) Ariel gave a description of the Raul who stabbed him; and (5) the description given by Ariel matched the appearance and identity of accused-appellant. Armando's testimony that

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Ariel pointed to accused-appellant as his assailant was part of the res gestae.[22]

We agree, however, with accused-appellant that Imelda Malaloan could not have pointed to him as the killer of Ariel because she did not actually witness the crime committed and, as she indicated in her sworn statement dated March 20, 1999, Ariel referred to his assailant as the husband of Irene[23] when the name of the common-law wife of accused-appellant is Corazon.[24]

Be that as it may, the testimonies of Daniel Macawili and Armando Llanes, who have not been shown to have any ill motive to testify falsely against accused-appellant,[25] were sufficient to establish beyond reasonable doubt that accused-appellant indeed committed the crime.[26] These witnesses are neighbors of accused-appellant at No. 704 Apelo Cruz Street, Pasay City, and thus may be assumed to know the latter. In any event, as this Court has time and again said, the matter of assigning values to declarations of witnesses is best performed by the trial judge who had the opportunity to observe the demeanor of witnesses on the stand.[27]

Second. The defense of alibi and denial interposed by accused-appellant does not deserve credence. For alibi to prosper, accused-appellant must not only prove by clear and convincing evidence that he was in another place at the time of the commission of the felony but also that it was physically impossible for him to be at the scene when the crime took place.[28] In this case, it cannot be denied that accused-appellant's house, where he claimed to have been sleeping at the time the crime was committed, was very near the Seven Eatery and the Philtranco Bus Station. In addition, Corazon Mileton's testimony that accused-appellant was sleeping at home when the crime took place cannot be given weight in view of the fact that she herself was asleep in their house at that time.[29] When an accused's alibi can only be confirmed by his relatives, who may not be impartial witnesses, his denial of culpability merits scant consideration.[30] On the other hand, accused-appellant's identification by credible prosecution witnesses as the author of the crime makes his alibi indefensible.[31]

Third. We agree with the trial court that the killing of Ariel Rivera was committed with treachery. There is treachery when the accused deliberately adopts such means, methods, and forms of execution that give the victim no opportunity for self-defense or retaliation.[32] Where a victim is totally unprepared for the unexpected attack from behind and has no weapon to resist it, as in this case, the assault is treacherous.[33]

Under Article 248 of the Revised Penal Code, the imposable penalty for murder is reclusion perpetua to death. There being no mitigating nor aggravating circumstance, the trial court correctly sentenced accused-appellant to suffer the penalty of reclusion perpetua.[34] We likewise affirm the award of P50,000.00 as civil indemnity for the death of Ariel Atienza as the same is automatically granted to the heirs of the victim without need of any evidence other than the fact of the commission of the crime.[35] However, an additional award of P50,000.00 as moral damages should also be given in favor of the victim's heirs in accordance with our rulings in other cases.[36]

WHEREFORE, the judgment of the Regional Trial Court, Branch 109, Pasay City is AFFIRMED with the MODIFICATION that accused-appellant Raul Rubares y Carolino is ordered to pay the heirs of the victim, Ariel Atienza, P50.000.00 as moral damages in addition to the amount of P50,000.00 awarded by the trial court as indemnity.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and De Leon, Jr., JJ., concur.
Buena, J., abroad on official business.

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[1] Per Judge Lilia C. Lopez.

[2] Records, p. 2.

[3] Also referred to in the Records as 7th Eatery.

[4] Said address on Apelo Cruz St. refers to a building consisting of several units all numbered 704.

[5] TSN, pp. 2-11, June 28, 1999; Exhs. R and S.

[6] TSN, pp. 2-8, July 8, 1999; Exhs. T and U.

[7] TSN, pp. 3-7, May 24, 1999; Exh. L.

[8] Exh. N.

[9] TSN, pp. 3-9, June 14, 1999; Exh. P.

[10] Exh. C.

[11] TSN, pp. 6-8, May 6, 1999; Exhs. E and F.

[12] Id., p.10.

[13] TSN, pp. 3-6, April 20, 1999; Exh. A.

[14] Exh. 1.

[15] TSN, pp. 10-21, Aug. 11, 1999; TSN, pp. 2-10, Aug. 12, 1999.

[16] Referred to in the Records as Ramon Alcones.

[17] TSN, pp. 3-20, July 26, 1999.

[18] Rollo, p. 45.

[19] Id., p. 61.

[20] People v. Ramirez, G.R. No. 138261, Apr. 17, 2001.

[21] People v. Casingal, 337 SCRA 100 (2000).

[22] People v. Cariquez, 315 SCRA 247 (1999).

[23] Exh. L.

[24] Exhs. 2 and 3.

[25] TSN, p. 5, June 28, 1999; TSN, p. 8, July 8, 1999.

[26] People v. Arellano, 334 SCRA 775 (2000).

[27] People v. Daroy, 336 SCRA 24 (2000).

[28] People v. Macaliag, 337 SCRA 502 (2000).

[29] TSN, p. 2, Aug. 11, 1999.

[30] People v. Macaliag, 337 SCRA 502 (2000).

[31] People v. Barro, G.R. No. 129892, Oct. 16, 2000.

[32] People v. Aglipa, 337 SCRA 181 (2000).

[33] People v. Lozada, 334 SCRA 602 (2000) citing People v. Balisteros, 237 SCRA 775 (1994).

[34] People v. Barellano, 319 SCRA 567 (1999).

[35] People v. Arellano, 334 SCRA 775 (2000).

[36] People v. Bacunawa, G.R. No. 136859, April 16, 2001; People v. De la Cruz, G.R. No. 128362, Jan. 16, 2001.

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