

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NICANOR ALZAGA, APPELLANT.

G.R. No. 144937. February 26, 2004

Ponente: CORONA, J.

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CORONA, J.:

On appeal is the decision[1] dated July 10, 2000 of the Regional Trial Court, Branch 259, Parañaque, which convicted herein appellant Nicanor Alzaga for the crime of murder. The dispositive portion of the assailed decision reads:

“WHEREFORE, PREMISES CONSIDERED, this Court finds accused Nicanor Alzaga ‘Guilty’ beyond reasonable doubt for the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code as amended by RA 7659 and he is hereby sentenced to suffer the imprisonment of reclusion perpetua in the absence of any aggravating or mitigating circumstances and to suffer the accessory penalties provided by law specifically Art. 41 of the Revised Penal Code and to indemnify the heirs of Eduardo de la Cruz P50,000.00 in line with existing jurisprudence, P18,400.00 for funeral expenses and P50,000.00 for moral damages.

The Clerk of Court is also directed to prepare the Mittimus for the immediate transfer of Nicanor Alzaga from the Parañaque City Jail to National Bureau of Prisons, Muntinlupa City.”[2]

Appellant was charged in an Information which alleged:

“That on or about the 22nd day of July 1997, in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack assault and stab one Edgardo de la Cruz with a bladed weapon (bolo), thereby inflicting upon him serious and mortal wounds which directly caused his death.

CONTRARY TO LAW.”[3]

On arraignment, appellant pleaded not guilty to the crime charged. Trial on the merits proceeded with the prosecution presenting its version of the facts through the testimonies of witnesses Felisa España, Rodigario Romero, Elena Lazarra, Dr. Antonio Vertido and SPO2 Fidel Alhambra.

A summary of the testimonies of the prosecution witnesses showed that, at around 6:00 p.m. on July 22, 1997, an untoward incident snuffed out the life of Edgardo de la Cruz. Edgardo appeared drunk then as he had just engaged in a drinking spree with some of his friends.[4] He was on his way home. Before reaching his house, however, Edgardo had to pass appellant’s house. While he was walking in front of appellant’s house, appellant suddenly emerged and pulled out a bolo from the side of the door of his house.[5] Appellant uttered something which prompted Edgardo to turn and face him. Appellant suddenly stabbed Edgardo at the right side of his chest and thereafter went back inside his house.[6]

Felisa España, Edgardo’s common-law wife, who witnessed the incident, shouted for help and rushed him to the

Olivarez Hospital. He was, however, declared dead on arrival.

SPO2 Fidel Alhambra responded to the call for police assistance and rushed to the crime scene. After he called on appellant to surrender, the latter gave himself up.

Dr. Antonio Vertido, senior medical officer of the NBI, performed an autopsy on the body of the victim. He issued autopsy report no. 97-2000[7] and testified that the victim sustained a stab wound on the right side of the chest, possibly caused by a single bladed weapon. Based on the location of the wound, the assailant and the victim were facing each other when the latter was attacked. The single stab wound on the right chest was fatal as it involved the aorta and the right lung.[8]

The defense had a different story. Through the testimonies of witnesses Nicanor Alzaga, Lydia Villa and Adoracion Basilio, the defense tried to establish that Edgardo's death resulted from an accident.

According to appellant, he and Edgardo had a slight misunderstanding on July 21, 1997, the day before the killing. The victim allegedly challenged appellant to a fight. Appellant, however, claimed that he remained inside his house. Edgardo then broke some bottles in front of appellant's house.

At around 5:00 p.m. on July 22, 1997, while appellant was in his house watching television, he allegedly heard a commotion outside the house. When appellant tried to catch a glimpse of what was going on, he saw Edgardo enter his (appellant's) house, carrying a bolo. He attempted to close the door but he was overpowered by the victim who was pushing the door. As they struggled, Edgardo dropped the bolo on the floor and they wrestled for possession thereof. Edgardo was able to grab the bolo and he tried to stab appellant but the latter was able to evade the blow. They struggled again for possession of the bolo and in the course of such struggle, appellant accidentally stabbed Edgardo who immediately fled.

The trial court gave more credence to the prosecution evidence and convicted appellant of the crime of murder and meted him the penalty of reclusion perpetua.

Hence, this appeal with appellant alleging that:

I

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE CONTRADICTORY TESTIMONIES OF THE ALLEGED EYEWITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT TREACHERY ATTENDED THE COMMISSION OF THE CRIME.

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER.[9]

Appellant argues that the testimonies of the prosecution witnesses were inconsistent on material points. Had Edgardo really been with his supposed drinking partners, the prosecution should have presented these men as they were the most credible witnesses.

Furthermore, the prosecution witnesses could not agree on the specific location of the victim Edgardo at the time he was allegedly attacked by appellant. To appellant, this inconsistency was "very material and substantial as (it) pertained to the essential nature of the crime committed, i.e., whether the offense was murder or plain

homicide.”[10] Appellant claims that Edgardo was forewarned just before the assault and that the attack was frontal. The attack was not so sudden so as to have caught Edgardo completely unaware. Appellant thus questions the appreciation of treachery by the trial court in the commission of the crime.

In a nutshell, appellant pleads that he should be convicted of the lesser offense of homicide instead of murder because treachery was not present.

We deny the appeal.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked.[11] In this case, it was evident that Edgardo was not aware that he would be attacked by appellant. There was no opportunity for Edgardo to defend himself as appellant unexpectedly struck him with the bolo after uttering words that caught the attention of the victim. Although the attack was frontal, it was so sudden and gave the unarmed and unsuspecting victim no chance to defend himself against the fatal blow. And even if the victim had the chance to defend himself, it must be noted that he was drunk, rendering him even more powerless to shield himself from appellant’s attack. Clearly, Edgardo’s defenses were down when appellant stabbed him with the bolo.

As testified by Felisa España:

Q: Noong bago saksakin ang asawa ninyo ng akusado, sa tingin n’yo po ba nakahanda itong asawa ninyo sa pangyayaring ‘yon?

A: Hindi po nakahanda.

Q: Bakit n’yo nasabi na hindi nakahanda ang inyong asawa sa ganong pangyayari?

A: Tagilid na po ‘yong lakad n’on. Lasing na po.

Q: Bago lusubin ng akusado ang inyong asawa at noong siya ay susunggaban na, nagkaroon ba ng pagkakataon ang asawa ninyo para madepensahan ang sarili niya?

A: Wala po.

Q: Bakit ninyo nasabi na walang pagkakataon na depensahan niya ang sarili niya?

A: Sa tantiya ko po, hindi niya akalain na sasaksakin siya ni Nicanor.

Q: Nang makita ninyong nasaksak na ang asawa ninyo at nakita n’yo kamo na tagus-tagusan ‘yong itak na ginamit ni Nicarnor Alzaga nang saksakin ang asawa n’yo, ano po ang unang reaksiyon ninyo nang makita n’yo ang ganong pangyayari?

A: Natulala po ako. Nang hugutin na nga po, saka ako nakasigaw ng “si Dodoy, sinaksak ni Nick!”

Q: ‘Yon ang nasabi mo?

A: Opo.

Q: Pagkatapos na bunutin ng akusado ang itak sa dibdib ng inyong asawa, ano ang sumunod na ginawa ni Nicanor Alzaga?

A: Pumasok po sa loob nila, patalikod pang pumasok, sa loob ng kanilang bahay.[12]

The testimony of Rodigario Romero was as follows:

Q: Do (sic) the victim have an occasion to defend himself?

ATTY. CARPIO:

He is incompetent, your honor.

COURT

May answer.

A: No, sir.

Q: Why?

A: Kasi po tumagos po agad.

Q: Handa ba ang biktima noong siya ay saksakin?

A: Hindi po.

Q: Why do you say that?

A: Kasi biglaan po.[13]

Elena Lazarra also corroborated the testimonies of Felisa and Rodigario:

Q: Noon bang nakatayo si de la Cruz sa harapan ng bahay ni Nicanor Alzaga, nandun’ ba si Nicanor?

A: Nasa loob ng bahay po.

Q: Pagkatapos, ano’ng nangyari?

A: Bigla pong lumabas si Nicanor.

Q: Ano ang kanyang dala-dala noong siya’y lumabas?

A: Itak po.

Q: Pagkatapos?

A: Biglang saksak sir.

Q: Biglang saksak, kanino?

A: Kay Edgardo po.

Q: Saan tinamaan itong si Edgardo de la Cruz?

A: Sa kaliwang dibdib, sir.

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Q: Noong pong bago saksakin ni Nicanor Alzaga ang biktima, nagkaroon ba sila ng away?

A: Wala po. Wala naman akong narinig.

Q: Hindi sila nagkasagutan?

A: Hindi ho.

Q: Paano n'yo masasabi ang paglusob ni Nicanor Alzaga kay Edgardo de la Cruz?

A: Biglang labas lang po niya.

Q: Nakahanda ba si Edgardo de la Cruz sa biglang paglusob na iyon ni Nicanor?

A: Hindi po siya nakahanda. Wala po sigurong kaalam-alam iyon.[14]

From the foregoing, the prosecution witnesses were clearly one in testifying that appellant surprised the victim with a fatal attack. Their testimonies cannot therefore be regarded as inconsistent.

Furthermore, the trial court found the prosecution witnesses to be credible. Well-settled is the rule that the trial judge's evaluation of the testimony of a witness and its factual findings are accorded not only the highest respect but also finality, unless some weighty circumstance has been ignored or misunderstood but which can alter the result or affect the judgment to be rendered. Given the opportunity to observe the witness on the stand, the trial judge is in a vantage position to assess the demeanor of the witnesses and determine if they are telling the truth or not.[15]

The trial judge has given his considered opinion. He gave more weight to the prosecution's evidence. We see no

reason to depart from his observations for indeed the evidence of the prosecution established sufficient factual basis for the conviction of appellant for the crime of murder. Thus, the failure to present Edgardo's alleged drinking partners as witnesses became inconsequential in the face of the incontrovertible evidence that it was appellant who killed the victim. The defense, on the other hand, failed to overcome the prosecution evidence that appellant killed Edgardo through treacherous means.

Because of the presence of treachery, we cannot convict appellant of the lesser offense of homicide as the presence of the aggravating circumstance of treachery qualified the crime committed by appellant to murder.

WHEREFORE, the decision of the trial court is hereby AFFIRMED.

SO ORDERED.

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

[1] Penned by Judge Zosimo V. Escano.

[2] Records, pp. 168-169.

[3] Records, p. 1.

[4] TSN, October 1, 1997, pp. 25-26.

[5] Ibid., p. 15.

[6] Ibid., pp. 18-22.

[7] Exhibit "J."

[8] TSN, March 16, 1998, pp. 556-558.

[9] Rollo, p. 56.

[10] Rollo, p. 68.

[11] People vs. Sindol, G.R. No. 131734, March 7, 2002 citing People vs. Lascota, 275 SCRA 591 [1997].

[12] TSN, October 1, 1997, pp. 37-40.

[13] TSN, November 27, 1997, pp. 363-364.

[14] TSN, January 26, 1998, pp. 459-460, 462-463.

[15] People vs. Valla, 323 SCRA 74 [2000], citing Sumalpong vs. Court of Appeals, 268 SCRA 764 [1997] and People vs. Sison, 189 SCRA 643 [1990]; People vs. Fuensalida, 281 SCRA 452 [1997].

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