PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUSEBIO PUNSALAN, ACCUSED-APPELLANT.

G.R. No. 145475. November 22, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated August 13, 1999, of the Regional Trial Court, Branch 55, Macabebe, Pampanga, finding accused-appellant Eusebio Punsalan[2] guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Bonifacio David, P100,000.00 as actual damages and P50,000.00 as indemnity.

The information against the accused-appellant and his co-accused, who is at large, alleged -

> That on or about the 2nd day of September, 1997 in the Municipality of Apalit, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused EUSEBIO PUNSALAN, conspiring and confederating with his co-accused, a JOHN DOE, with intent to kill, by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot Bonifacio David with a hand gun on the nape which caused his untimely death.[3]

Only accused-appellant was arraigned on January 18, 1999, pleading not guilty to the charge.[4]

The prosecution presented four witnesses: Flora David, the victim's widow; Dante David, the victim's son; Josephine David, the victim's daughter-in-law; and SPO4 Jose D. Malaca, the investigating policeman.

The evidence for the prosecution showed that on September 2, 1997, at around 8 o'clock in the morning, the spouses Bonifacio and Flora David were in front of their store at Sulipan, Apalit, Pampanga when two men on a motorcycle passed by. The driver was wearing a helmet while his passenger's head was uncovered.[5] The motorcycle was also noticed by at least two other persons: Dante David, Bonifacio's son, who was cleaning the terrace of his house located across the street from his father's house,[6] and Josephine David, Dante's wife, who was in front of her father-in-law's garage.[7] Josephine saw the two persons riding on the motorcycle looking at her.[8] Sensing nothing unusual, Bonifacio continued arranging bottles in front of the store. Just as Bonifacio finished arranging the bottles, the motorcycle returned and stopped in front of the couple. The passenger alighted, but the driver did not leave his vehicle. Bonifacio stood up and waited for the passenger to approach. The passenger asked Bonifacio if he was Mang Asiong, to which the latter answered in the affirmative. When Bonifacio inquired as to the reason for the question, the stranger did not reply. Instead, he pulled out a .38 caliber gun from his waistband and shot Bonifacio four times.[9]

Flora covered her eyes upon seeing her husband shot. After the assailants had left, she ran to her husband and embraced him.[10]

Dante, who was then cleaning the terrace of his house, heard the gunshots. He picked up a pipe, rushed to his father' house, and recognized his father's assailant to be accused-appellant. Upon seeing Dante, accused-appellant

pointed his gun at him. Dante was held at gunpoint until the culprits left on their motorcycle. Thereafter, Dante went to the store where he found his father lying on the ground and his mother crying.[11]

Josephine also heard the gunshots and saw the gunman, but not the victim. Upon hearing the gunshots, she ran towards her father-in-law's garage and hid her children. After the culprits had left, she approached her father-in-law who lay in a pool of blood,[12] her mother-in-law embracing him. She called out to her neighbors and their children for help. The police came shortly after.

Neighbors responded to the call for help, but Bonifacio was already dead. The investigating policemen took pictures of Bonifacio's body,[13] which was then taken to the Calumpit General Hospital where Bonifacio was declared dead.[14]

Accused-appellant made a qualified admission of the death certificate of Bonifacio David (Exh. A); the photograph of the cadaver of the victim (Exh. B); and the autopsy report (Exh. C). But accused-appellant disputed the police investigation report (Exh. D). For this reason, the prosecution presented SPO4 Jose D. Malaca, who testified that he investigated a reported shooting incident which allegedly occurred in front of the Fermentation industry in Brgy. Sulipan, Apalit, Pampanga at about 7:30 in the morning of September 2, 1997. According to SPO4 Malaca, when he and his companions, SPO4 Paulino S. Danganan and SPO3 Avelino S. Balingit, Jr., arrived at the crime scene, they found SPO4 Eleuterio S. Danganan already there.[15] They interviewed people in the vicinity of the crime scene, as well as the victim's widow, his son, and his daughter-in-law, all of whom were hysterical at that time. When asked to describe the suspect, the widow stated that the man was wearing a white t-shirt and riding in tandem on a motorcycle. After the investigation, they tried to go after the assailants, but they failed to catch them.[16]

On cross-examination, SPO4 Malaca stated that the victim's widow, son, and daughter-in-law did not give an exact identification of the assailants. However, he testified that they categorically stated that they could identify the assailant if shown to them.

The defense presented three witnesses: accused-appellant Eusebio Punsalan; Michael Alcoran, a neighbor of accused-appellant; and Cecilia Punsalan, the wife of accused-appellant.

Accused-appellant Eusebio Punsalan denied participation in the killing of Bonifacio David. He maintained that he was in his house in Barangay Concepcion, San Simon, Pampanga the whole day of September 2, 1997 to celebrate his deceased mother's first birth anniversary after her death in January of that year. His relatives and "compadres" were in attendance.

Accused-appellant further testified that he was arrested on July 2, 1998 by the police with the help of his compadre, Marlin Talens, who convinced him to go with him (Marlin Talens) under the guise of helping him (Eusebio Punsalan) get a job as a car driver. When accused-appellant and Talens reached Kambingan in Mexico, Pampanga, a colonel placed tape over the eyes of accused-appellant. Accused-appellant said that he was later brought to Camp Crame in Quezon City, where he was accused of killing a certain Serrano. He was exonerated in that case. After accused-appellant's release from Camp Crame, he was brought to Camp Olivas, San Fernando, Pampanga. In Camp Olivas, accused-appellant was told that he was the person in the cartographic sketch shown to him. The person in the drawing was described as having flat hair "without bangs, with a pauper face and a [mustache]." Eusebio Punsalan found that he was being accused of yet another crime. Before the wife and son of the victim came to identify him, Sgt. Peralta of Camp Olivas tried to part accused-appellant's hair. Accused-appellant thought that this was done so that he would look like the person in the sketch. When the relatives of the victim arrived, the son approached accused-appellant and punched him. According to the son, accused-appellant was the one who killed his father. Accused-appellant denied this assertion. The mother likewise

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went near accused-appellant and said "So, it is you who killed my husband."[17]

Michael Alcoran, accused-appellant's neighbor, testified that at the time of the shooting, accused-appellant was in his house preparing some dishes.[18] He also stated that he saw accused-appellant throughout that day. He said that accused-appellant was a kind person who had no bad record in their place. He was surprised when accused-appellant was arrested as he knew him to be a good man. During cross-examination, Alcoran admitted that he was accused-appellant's nephew, accused-appellant being a brother of his mother.

On the other hand, Cecilia Punsalan testified that she was with her husband and children in their house in Duyung, Concepcion, San Simon, Pampanga on September 2, 1997. They were making broth and spaghetti at around 7:30 in the morning as it was her deceased mother-in-law's first birthday after her death. She testified that at no time did accused-appellant leave their house. There were also visitors and "compadres" with them the whole day. During cross-examination, Cecilia Punsalan testified that aside from her family and her husband's nephew and niece, there were only about eight other people with them, who are either siblings or grandchildren of her mother-in-law.[19]

On August 13, 1999, the trial court rendered its decision, the dispositive portion of which states:

> WHEREFORE, premises considered, the Court finds the accused Eusebio Punsalan guilty beyond reasonable doubt of the crime of Murder and as a consequence of which he is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of Bonifacio David the amount of P100,000.00 as actual damages and the further sum of P50,000.00 for the death of the victim.[20]

The defense filed a motion for reconsideration on September 13, 1999, but the same was denied by the trial court in its order dated September 14, 1999.

Hence this appeal. The only error assigned by the accused-appellant is whether his identity has been proven beyond reasonable doubt. When an accused challenges his identification by witnesses, he in effect attacks their credibility.[21] But, insofar as the issue of credibility of witnesses is concerned, appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial. Unless certain facts of substance have been overlooked, which if considered, might affect the result of the case, their factual findings are accorded faith and credit by appellate courts.[22] After examination of the records of this case, we find no compelling reason to overturn the accuracy and correctness of the witnesses' identification of accused-appellant as the assailant.

First. Accused-appellant contends that Flora David could not have accurately remembered the person who shot her husband as the assailant was a stranger to her. He further argues that the incident happened in a few seconds, and it would be improbable that the face of the assailant could be registered photographically in the mind of Flora David considering that the latter was no longer young.

These arguments are untenable. While it might be easier for a witness to recognize the culprit if they are known to each other, an identification made by a witness is not less credible just because the accused is a stranger. Neither can the lapse of only a few seconds in witnessing the crime diminish Flora David's credibility. Time is not an accurate measure of a person's ability to recognize a face. A startling or frightful experience creates an indelible impression in the mind that can be recalled vividly.[23]

Flora David, the victim's widow, categorically stated that she could recognize the person who shot her husband if she saw him again. As the trial court stated:

> Like most victims of violence, the face of their assailant was already etched in their minds. Most often the face

> and body movement of the assailant creates an impression which cannot be erased from their memory. While Flora David is not the victim herself, she was with her husband when he was killed.[24]

Moreover, it does not appear from Flora David's testimony that, at 61 years old, she was incapable of perceiving and remembering what she perceived. In her testimony, she gave a vivid account of what transpired on September 2, 1997. The manner by which the witness recounted the circumstances surrounding her husband's death belies accused-appellant's contention of mental incapacity of the witness to remember the incident accurately. There is no doubt that age has not dulled or impaired her senses.

Nor is the fact that Flora David was the wife of the victim a reason for according less credit to her testimony. We have said that a relative will naturally be interested in identifying the malefactor to secure his conviction and obtain justice for the death of the victim.[25] As we held in another case:[26]

> [B]lood relationship between a witness and the victim does not, by itself, impair the credibility of the witness. On the contrary, relationship strengthens credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the real culprit. The earnest desire to see justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime.

Accused-appellant likewise maintains that Flora David knew of no reason why accused-appellant should kill her husband. But proof of motive is necessary to establish the guilt of the accused only when there are serious doubts on the credibility of the witnesses and their testimonies. Proof of motive to commit the crime becomes irrelevant with the positive identification of the accused.[27]

Second. Accused-appellant insists that the son and daughter-in-law of the victim could not have seen the face of the assailant. However, he failed to support his assertion. On the other hand, the testimonies of both Dante and Josephine David show that they had the opportunity to look at the assailant's face. Dante saw the incident from the terrace of his house. As he testified:

> Q
>
> Mr. Witness, you just said that you were still in the terrace when you heard those four shots, which is true now, did you hear them or did you see them?
>
> A
>
> I heard the gun shots, sir, and I saw somebody fired the shots.
>
> Q
>
> You saw the persons firing the shots because you got out of the house, is that correct?
>
> A
>
> Because my house has iron grills, I could easily see what's happening outside, sir.[28]

Indeed, the assailant pointed the gun at Dante before he got on the motorcycle.

> Q
>
> Did you recognize the person who was holding a gun and at the same time fired it?
>
> A
>
> Yes, sir, because he also pointed the gun to me.[29]

With respect to the credibility of Josephine, we note that she and the assailant looked at each other before the

assailant alighted from the motorcycle. She said:

Q

What, if anything, did you notice in that motorcycle that passed by?

A

I looked at it, and it passed by again, sir.

Q

Did you notice how many persons on board of that motorcycle?

A

Yes, sir.

Q

When it passed by again, what, if anything, happened?

A

It passed by, sir, and he looked at me and I looked at him also, sir.

Q

Who looked at you?

A

The two (2) persons, sir, and they whispered.

Q

Did you recognize the two (2) persons who looked at you who were on board of the motorcycle?

A

Only the passenger, sir, because he had no helmet on.[30]

As for the alleged disparity between the testimony of Josephine David as to the assailant's height (5'7") and the testimony of accused-appellant (5'3" or 5'4"), the same is trivial and cannot affect the credibility of the witness.

Third. Accused-appellant makes much of the fact that there is no police report nor affidavit executed by Flora David or any relative of the victim. They executed a Sinumpaang Salaysay at Camp Olivas, San Fernando, Pampanga only after ten months.

There is no requirement, however, that complainant must execute a sworn affidavit or Sinumpaang Salaysay at the earliest time, nor a rule that delay in the execution thereof would impair the credibility of the prosecution witnesses. In the case at bar, the crime was immediately reported to the police. At no time did Flora, Dante, or

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Josephine David refuse to cooperate with the police who conducted the investigation. SPO4 Jose Malaca testified that the victim's relatives categorically stated that they could identify the assailant once they saw him again.

Although SPO4 Malaca commenced the investigation of the killing immediately after its commission, the relatives of the victim were not able to give him a description of the assailant as they were in an emotional state. Flora David could only give a sketchy account of the assailant. As SPO4 Jose D. Malaca testified:

> Q
>
> Was she able to give you a full description of the suspect?
>
> A
>
> At that hysterical condition, she only stated that the man is wearing a white t-shirt, driving in tandem motorcycle and the man in tandem motorcycle alighted and he is the man who pulled the trigger and shot her husband, sir.[31]

But Flora David was able to identify the accused-appellant, first in a police lineup in which three other persons were presented to her,[32] and again in open court.[33] This identification was further corroborated by the identification of accused-appellant by Dante and Josephine David during their testimonies in court.[34]

Accused-appellant contends, however, that he was not identified in a police lineup but was shown alone to the relatives of the victim. Again, accused-appellant failed to give evidence to support his assertion. The bare denial of accused-appellant as to the police lineup identification cannot prevail over the positive and categorical declaration of Flora David that she identified accused-appellant in a police lineup consisting of four men.[35] Flora David testified:

> Q
>
> At the Camp Olivas Station when you were called to identify the accused, were you asked by the authorities there before you were able to see the accused to make a description of him?
>
> A
>
> No, sir. They brought us there, they lined up four persons.
>
> Q
>
> Is it not a fact, Madam Witness, that a cartographic sketch of the accused was made?
>
> A
>
> They presented us one, but we said he was not the one, sir.
>
> Q
>
> Was the basis of that cartographic sketch your description of him?
>
> A
>
> No, sir.[36]

Fourth. We find that the trial court correctly disregarded accused-appellant's alibi. Time and again, we have said that alibi is the weakest defense and cannot prevail over the positive identification of the accused by the prosecution witnesses. For alibi to prosper as a defense, the accused must show that he was so far away that he

could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission, and that his presence elsewhere renders it impossible for him to be the guilty party.[37] In this case, the distance between Brgy. Concepcion, San Simon, Pampanga and the Sulipan bridge in Apalit, Pampanga is only about 10 kilometers.[38] As the trial court noted, accused-appellant, who was riding a motorcycle, could easily reach Sulipan, Apalit, Pampanga, commit the crime, and return to Concepcion, San Simon, Pampanga in less than two hours.[39]

We disagree with the trial court that evident premeditation should be taken against accused-appellant. There was no proof to show (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) a sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender time to reflect on the consequences of his act.[40] 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.[41]

We hold, however, that treachery attended the killing of Bonifacio David. To prove treachery, the following must be established: (1) the employment of a means of execution which gives the person attacked no opportunity to defend himself or to retaliate and (2) that said means of execution was deliberately or consciously adopted.[42] In this case, the victim, Bonifacio David, was facing accused-appellant and waiting for a reply when he was shot four times. There was no warning, hence the victim was totally defenseless.

For the death of Bonifacio David, the Court affirms the award of P50,000.00 as civil indemnity. An additional amount of P50,000.00 as moral damages should likewise be awarded in favor of the heirs of the victim. Moral damages can be awarded without further proof other than the death of the victim.[43] However, the award of P100,000.00 as actual damages should be deleted for lack of receipts to support it. Pecuniary loss must be established by credible evidence as basis for an award of actual damages.[44]

WHEREFORE, the decision of the Regional Trial Court, Branch 55, Macabebe, Pampanga, sentencing accused-appellant to suffer the penalty of reclusion perpetua and to pay the heirs of Bonifacio David the amounts of P50,000.00 as civil indemnity, is AFFIRMED with the MODIFICATIONS that accused-appellant is further ordered to pay P50,000.00 as moral damages, while the award of actual damages is DELETED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Reynaldo V. Roura.

[2] Also spelled as Punzalan in the records.

[3] Records, p. 2.

[4] Id., p. 18.

[5] TSN (Flora David), pp. 3 and 11, May 17, 1999.

[6] TSN, (Dante David), p. 4, May 18, 1999.

[7] Records, p. 3.

[8] TSN (Josephine David), p. 10, May 18, 1999.

[9] TSN (Flora David), pp. 4-6, May 17, 1999.

[10] TSN (Josephine David), pp. 6 and 13, May 18, 1999.

[11] TSN (Dante David), pp. 4-5, 7-9, May 18, 1999.

[12] TSN (Josephine David), p. 12, May 18, 1999.

[13] TSN (Flora David), p. 6, May 17, 1999.

[14] TSN (Dante David), p. 6, May 18, 1999.

[15] Records, p. 9.

[16] TSN (SPO4 Jose D. Malaca), pp. 5 and 10, May 26, 1999.

[17] TSN (Eusebio Punsalan), pp. 3-11, June 14, 1999.

[18] TSN (Michael Alcoran), pp. 4-5, 8-9 June 30, 1999.

[19] TSN (Cecilia Punsalan), pp. 3-5, 7, July 1, 1999.

[20] Decision, p. 3; Records, p. 96.

[21] People v. Aquino, 329 SCRA 247, 261 (2000) citing People v. Martinez, 274 SCRA 259 (1997); People v. Apawan, 235 SCRA 355 (1994).

[22] Id. citing People v. Lagario, 224 SCRA 351 (1993); People v. Simon, 209 SCRA 148 (1992); People v. Lee, 204 SCRA 900 (1991).

[23] People v. Biñas, 320 SCRA 22, 53 (1999) citing People v. De Guia, 280 SCRA 141 (1997); People v. Daquipil, 240 SCRA 314 (1995).

[24] Decision, p. 3; Records, p. 96.

[25] People v. Adoviso, 309 SCRA 1, 13 (1999) citing People v. Sotes, 260 SCRA 353 (1996).

[26] People v. Realin, 301 SCRA 495, 510 (1999) citing People v. Boniao, 217 SCRA 653, 670-671 (1993); People v. Viente, 225 SCRA 361, 368-369 (1993); People v. Galas, 262 SCRA 381, 391 (1996); People v. Soria, 262 SCRA 739, 748-749 (1996).

[27] People v. Bermas, 309 SCRA 741, 775 (1999).

[28] TSN (Dante David), p. 8, May 18, 1999.

[29] Id., p. 4.

[30] TSN (Josephine David), p. 11, May 18, 1999.

[31] TSN (SPO4 Jose D. Malaca), p. 5, May 26, 1999.

[32] TSN (Flora David), p. 12, May 17, 1999.

[33] Id., p. 5.

[34] TSN (Dante David), p. 9, May 18, 1999; TSN (Josephine David), p. 12, May 18, 1999.

[35] TSN (Flora David), p. 12, May 17, 1999.

[36] Id.

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[37] People v. Baring, G.R. Nos. 130515 & 147090, March 14, 2001.

[38] TSN (Eusebio Punsalan), p. 12, June 14, 1999.

[39] Decision, p. 3; Records, p. 96.

[40] People v. Galvez, G.R. No. 136790, March 26, 2001 citing People v. Orcula, G.R. No. 132350, July 5, 2000.

[41] Id. citing People v. Gadin, 331 SCRA 345 (2000).

[42] Id. citing People v. Geral, 333 SCRA 453 (2000).

[43] Cf. People v. Cambi, 333 SCRA 305 (2000).

[44] People v. Andres, 296 SCRA 318, 341 (1998).

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