

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR HATE, ACCUSED-APPELLANT.

G.R. No. 145712. September 24, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Sorsogon, Branch 52, in Criminal Case No. 98-4583, convicting accused-appellant Victor Hate of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim the sum of P50,000.00 as civil indemnity and P15,000.00 as reasonable actual expenses and to pay the cost.

The Information against accused-appellant reads:

That on or about 12:00 midnight of December 31, 1997, at barangay Central, municipality of Casiguran, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation armed with bladed weapon, did then and there, wilfully, unlawfully and feloniously, attack, assault and stab one MARCIAL DIO, inflicting upon him a fatal injury which caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.[2]

Upon arraignment on June 4, 1998, accused-appellant, assisted by counsel de parte, entered a plea of not guilty. Thereafter, trial ensued. The prosecution presented the following witnesses: (1) Bernardo Palacio; (2) Joselito Esmeña; (3) Dr. Antonio Lopez; and (4) Remedios Dio.

On the other hand, the defense presented accused-appellant and Zoraida Barbiran.

The facts as narrated by the eyewitness presented by the prosecution are as follows:

At about midnight of December 31, 1997, Bernardo Palacio was walking from the church of Casiguran, Sorsogon towards the transportation terminal with Marcial Dio on his left side, Joselito Esmeña on his right side and one Dante ahead of them. Suddenly, Marcial Dio cried, "I was hit." Bernardo immediately turned to his left side and saw accused-appellant stab the victim from behind with a sharp instrument. Accused-appellant thereafter ran away. He was able to identify the accused-appellant because the latter stared at him and a beam of flashlight shone on his face. The victim was brought to the Sorsogon Provincial Hospital. Bernardo then went to Cogon, Casiguran, Sorsogon with Joselito Esmeña to tell the victim's parents what had happened.[3]

Joselito Esmeña corroborated the testimony of Bernardo Palacio and further testified that they chased accused-appellant for about two meters but they stopped because stones were pelted at them;[4] and that he signed a sworn statement before Judge Rica H. Lacson.

Dr. Antonio Lopez, the doctor who performed the surgical operation on the victim and issued the corresponding death certificate, testified that the victim died at 5:10 in the morning of January 1, 1998 and the immediate cause

of death was aspiration of gastric content secondary to stab wound in the lumbar area which is considered a vital organ.[5]

Remedios Dio, the mother of the victim, testified on the damages they suffered caused by the untimely demise of their son.[6]

For his defense, accused-appellant denied authorship of the crime. He alleged that at around 10:00 in the evening of December 31, 1997, he stayed at the house of his uncle, Rommel Grecia, at Logger, Casiguran, Sorsogon because he was suffering from stomachache. At around 2:00 in the morning, he requested that he be brought to the house of his sister, Zoraida Barbiran.[7]

Zoraida Barbiran testified that Rommel Grecia brought her brother, accused-appellant, to her house. She gave him leblon, a medicine for stomach pains, and hot water. After several hours, accused-appellant was relieved, but he stayed in her house until 7:00 in the morning of January 1, 1998.[8]

After trial, judgment was rendered against the accused-appellant, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds accused Victor Hate guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code with the qualifying circumstance of treachery, the Court hereby sentences him to an imprisonment of Reclusion Perpetua and to pay the heirs of Marcial Dio the sum of Fifty Thousand (P50,000.00) Pesos, Philippine currency, as civil indemnity without subsidiary imprisonment in case of insolvency, to reimburse the heirs of the victim the amount of P15,000.00 as reasonable actual expenses and to pay the cost.

Accused being detained, his detention shall be credited in full in the service of his sentence.

SO ORDERED.[9]

In this appeal, accused-appellant raises the lone issue of:

WHETHER THE EVIDENCE ADDUCED BY THE PROSECUTION HAS SATISFIED THE TEST OF GUILT BEYOND REASONABLE DOUBT, IRRESPECTIVE OF THE DEFENSE OF ALIBI OR DENIAL INTERPOSED BY THE ACCUSED-APPELLANT WHICH IS INHERENTLY THE WEAKEST OF ALL DEFENSES.

Accused-appellant asserts that the prosecution's witnesses failed to properly identify the perpetrator of the crime because the locus criminis was dark and the assailant ran away when Palacio focused the flashlight on him. Furthermore, both Bernardo Palacio and Joselito Esmeña were not familiar with the assailant's name.

The issue of whether or not appellant was in fact identified by the prosecution eyewitnesses is anchored on the issue of credibility. It is well-entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court was in a better position to decide the question of credibility.[10]

A thorough review of the records of the instant case shows that there is no reason to deviate from the trial court's evaluation and assessment of the credibility of witnesses. The trial court did not err in giving credence to the testimony of the prosecution's witnesses that they were able to identify accused-appellant as the perpetrator of the crime. We do not doubt the identification of accused-appellant considering that the place was not so dark,[11] and Bernardo Palacio was able to focus the beam of his flashlight on the face of accused-appellant.[12] Moreover, his

distance from accused-appellant was less than a meter.[13] Bernardo Palacio's testimony is further bolstered by Dr. Antonio Lopez's testimony to the effect that the victim sustained one stab wound at the back. A detailed testimony acquires greater weight and credibility when confirmed by autopsy findings.[14]

We are likewise not persuaded by accused-appellant's claim that Bernardo Palacio and Joselito Esmeña did not know his real name at the time of the alleged crime. The records reveal that although it was the police who supplied the name of accused-appellant; it was done after Bernardo Palacio described the facial features of the perpetrator. Thus, he stated on cross examination:[15]

Atty. Gojol:

x x x x x x x x

q. And who told you his name?

a. The policeman.

Court:

q. Why did that policeman tell you his name?

a. Because I described the facial feature of the assailant to the police.

q. So it was the police who told you that it was Victor Hate?

a. Yes, sir.

q. When was that Victor Hate presented to you?

a. After two weeks, after he was arrested.

On re-direct examination,[16] Bernardo Palacio clarified how he was able to identify the accused-appellant, thus:

Atty. Gerona:

x x x x x x x x

q. That person you saw during the arraignment who, according to you, was the same person you saw at the police station, was he also the same person you saw who stabbed Marcial Dio?

a. Yes, sir.

q. Even without a flashlight, could you recognize Victor Hate to be the one you saw when you turned your back as the one who stabbed Marcial?

a. I really recognized him because it was not so dark.

q. How near were you to him when you stared at each other?

a. Less than a meter.

q. What is the facial feature of Victor Hate, what do you remember most which you told the police?

a. He is dark with curly hair and with thick eyebrows.

Accused-appellant failed to show that prosecution witnesses were prompted by any ill-motive to falsely testify or wrongfully accuse him of so grave a crime of murder. The Court adheres to the established rule that in the absence of any evidence to show that the witness was actuated by any improper motive, his identification of the

assailant should be given full faith and credit.[17]

Moreover, the witnesses need not know the names of the accused as long as they recognize their faces. What is important is that the witnesses are positive as to the perpetrators' physical identification from the witnesses' own personal knowledge.[18]

As regards the inconsistencies between the testimony and the sworn statement executed by Joselito Esmeña before the police as to what happened to Erwin Enano, suffice it to say that affidavits are generally not prepared by the affiants themselves but by others, and affiants are only made to sign them. Certain discrepancies between declarations made in the affidavit and those made at the witness stand seldom discredit the declarant.[19] To be sure, even without the testimony of Joselito Esmeña, the testimony of Bernardo Palacio is sufficient to convict the accused.

Accused-appellant's defense of alibi fails to overthrow the straightforward accounts of the credible prosecution eyewitnesses and his positive identification as the perpetrator of the murder of Marcial Dio. We agree with the trial court that the defense of alibi is inherently a weak defense and cannot prevail over the positive testimony of the witnesses that the accused-appellant committed the crime.[20]

The trial court correctly appreciated treachery as a qualifying circumstance in the killing of the victim. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim.[21] In the case at bar, accused-appellant stabbed the victim at the back and at a place which was not so illuminated. There was no provocation on the part of the victim as he just had finished hearing Mass and the incident happened so fast. Clearly, the victim was in no position to defend himself and to repel the attack of accused-appellant.

Hence, the trial court was correct in convicting accused-appellant of the crime of Murder. Under Article 248 of the Revised Penal Code, the penalty for Murder is reclusion perpetua to death. The lesser of the two indivisible penalties shall be imposed considering that there are no other attendant circumstances.[22]

The award of actual damages amounting to P15,000.00 was not duly proven by the prosecution. In awarding said damages, the trial court merely relied on the list of expenses[23] presented by Remedios Dio. The list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transaction. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized in court.[24] Thus, the award of actual damages must be deleted for lack of competent proof.[25] However, as the heirs of the victim incurred medical and funeral expenses, we deem it proper to award P10,000.00 by way of nominal damages so that a right which has been violated may be recognized or vindicated.[26]

In *People v. Ciron*,[27] the Court held that the unlawful killing of a person, which may either be murder or homicide, entitles the heirs of the deceased to moral damages without need of independent proof other than the fact of death of the victim. Thus, an award of P50,000.00 is proper and reasonable under current case law.[28]

Finally, an award of exemplary damages in the amount of P25,000.00 is in order, in view of the attendance of the qualifying circumstance of treachery. In *People v. Catubig*,[29] we held that in criminal cases, exemplary damages in the amount of P25,000.00 is recoverable if there is present an aggravating circumstance, whether qualifying or ordinary, in the commission of the crime.[30]

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Sorsogon, Branch 52, in Criminal Case No. 98-4583, convicting accused-appellant Victor Hate of the crime of Murder and sentencing him

to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATION as to damages. Accused-appellant is ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages, and P10,000.00 as nominal damages. The award of actual damages in the amount of P15,000.00 is DELETED for lack of sufficient basis. Cost de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

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- [1] Penned by Judge Honesto A. Villamor.
- [2] Rollo, p. 10.
- [3] TSN, September 14, 1998, pp. 3-8.
- [4] TSN, September 23, 1998, pp. 26-27.
- [5] TSN, September 14, 1998, pp. 18-21.
- [6] TSN, November 12, 1998, pp. 14-24.
- [7] TSN, June 14, 1999, pp. 3-5.
- [8] TSN, September 6, 1998, pp. 2-3.
- [9] Rollo, p. 57.
- [10] People v. Edem, G.R. No. 130970, February 27, 2002.
- [11] TSN, September 14, 1998, p. 15.
- [12] Ibid., p. 6.
- [13] Id., p. 15.
- [14] People v. Ayupan, et al., G.R. No. 140550, February 13, 2002.
- [15] TSN, September 14, 1998, p. 13.
- [16] Ibid., pp. 14-15.
- [17] People v. Baniega, G.R. No. 139578, February 15, 2002.
- [18] People v. Dinamling, G.R. No. 134605, March 12, 2002.
- [19] People v. Bulan, et al., G.R. No. 133224, January 25, 2002.
- [20] Rollo, Decision, p. 55.
- [21] People v. Ciron, et al., G.R. No. 139409, March 18, 2002.
- [22] Revised Penal Code, Art. 63 (2).
- [23] Records, Exhibit E, p. 65.
- [24] People v. Bonifacio, et al., G.R. No. 133799, February 5, 2002.
- [25] People v. Carillo, 333 SCRA 338 [2000] .

[26] Ibid., p. 353.

[27] Supra.

[28] People v. Umayam, G.R. No. 134572, April 18, 2002.

[29] G.R. No. 137842, August 23, 2001.

[30] People v. Samson, G.R. No. 124666, February 15, 2002.

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