

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANK LOBRIGAS, MARLITO LOBRIGAS (AT LARGE) AND TEODORICO MANTE (ACQUITTED), ACCUSED. FRANK LOBRIGAS, ACCUSED-APPELLANT.

G.R. No. 147649. December 17, 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 Bohol, Branch 3, in Criminal Case No. 9694, convicting accused-appellant Frank Lobrigas of the crime of Murder, sentencing him to suffer the penalty of reclusion perpetua and ordering him to indemnify the heirs of the victim the amount of P50,000.00 as actual, exemplary and moral damages.

Frank Lobrigas, Marlito Lobrigas and Teodorico Mante were charged under an information which reads:[2]

That on or about the 19[th] day of February, 1996 in the municipality of Loon, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and without justifiable cause, with treachery by attacking the victim without affording the latter an opportunity to defend himself and with abuse or taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and box one Felix Taylaran who was already 76 years old and could no longer put up an effective defense, thereby inflicting injuries on the vital parts of the body of the said victim which resulted in his death; to the damage and prejudice of the heirs of the victim.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code as amended by Rep. Act. No. 7659.

Accused-appellant Frank Lobrigas and accused Teodorico Mante were arrested while Marlito Lobrigas, the brother of accused-appellant, remains at large. Thereafter, accused-appellant escaped while under detention in the Municipal Jail of Loon INP. Thus, trial proceeded only as against accused Teodorico Mante. Shortly after the prosecution rested its case, herein accused-appellant was re-arrested.

Upon arraignment on October 10, 1997, accused-appellant duly assisted by counsel, pleaded not guilty. Thereafter, separate trial was conducted against him.

The antecedent facts, as culled from the records, are as follows:

The victim Felix Taylaran was a regular farmhand of Castor Guden. On February 19, 1996, he asked for permission not to work for it was raining and he had to go to the store of Teodorico Mante. At 4:00 p.m., Felix returned to Castor Guden's house with bruises on his face and injuries all over his body. He told Castor that he was mauled by accused-appellant Frank Lobrigas, accused Marlito Lobrigas and Teodorico Mante at the store. Felix spent the night in Castor's house and left the following morning to go to the seaside house of Lorie Aguilar,

his cousin, to heal his wounds in the saltwater. However, the next day, Felix Taylaran died.

Rosa Taylaran Solarte, daughter of the victim, testified that a day after the mauling, her father came to her house and told her that he was beaten up by Frank Lobrigas, Marlito Lobrigas and Teodorico Mante. He told her that he was in pain and felt weak. He then went to the house of Lorie Aguilar apparently to recuperate.

Dr. Tito Miranda of the Municipal Health unit of Loon, Bohol conducted an autopsy on the body of the victim and concluded that the immediate cause of death was internal hemorrhage caused by the severe beating and mauling on the chest portion of the victim's body.

On the other hand, accused-appellant had a different version of the events. He denied the accusation and alleged that he was asleep at the time the incident took place. He admitted that he was at the store of Teodorico Mante having a drinking spree with his companions, Dennis Palma, Mario Granderos, Marlito Lobrigas and Rufo Creta, Jr. They were later joined by the victim, Felix Taylaran. When Felix had too much to drink, he became rowdy and drew his knife. This was snatched from him by Mario Granderos and turned over to Mante, who was a barangay councilman. Mante admonished Felix and accused-appellant told him to go home. When Felix left, Mante and Marlito Lobrigas followed him. Accused-appellant stayed behind and lay down on a bench outside the store until he fell asleep. He only learned about the mauling incident later from Mario Granderos.

Accused-appellant likewise denied that he left his house to evade arrest. He claimed that he did not know about the charge against him. He did not leave his house for one month after the incident upon his father's advice, for he might be investigated by the police. He went to Cebu City on March 10, 1996 to work at Southern Island Hospital. When he came home months later to attend the fiesta celebration on May 15, 1996, it was then that he came to know of the case filed against him. Then on May 18, 1996, he was arrested and detained at the Municipal Jail of Loon. Two months and four days later, he left his cell as the door was opened by a co-prisoner and nobody was guarding them at that time.

After trial, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the Court is morally convinced and so finds herein accused Frank Lobrigas GUILTY beyond reasonable doubt of the crime of MURDER, as charged, qualified by the circumstance of abuse of superior strength as the victim was an old man of seventy six years of age. Thus, he is hereby sentenced to suffer imprisonment of Reclusion Perpetua in accordance with Art. 248 of the Revised Penal Code under which the instant case falls. He is further ordered to indemnify the heirs of the victim the amount of P50,000.00 as actual, exemplary and moral damages put in one.

SO ORDERED.[3]

Hence, this appeal based on the following assigned errors:

I

THE TRIAL COURT GRAVELY ERRED WHEN IT CONVICTED THE ACCUSED ANCHORING MAINLY ON THE EVIDENCE OF FLIGHT;

II

THE TRIAL COURT ERRED WHEN IT SEEKED (sic) ACCUSED CONVICTION ABSENT OF ANY EVIDENCE TAGGING THE ACCUSED FRANK LOBRIGAS;

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY WHEN THERE WAS NO

EVIDENCE THAT POINTS THE ACCUSED FIST BLOW THAT PROXIMATELY CAUSED THE VICTIM'S DEATH.

The issue to be resolved is whether the testimonies of the prosecution witnesses and the evidence of flight are sufficient to establish the guilt of accused-appellant beyond reasonable doubt.

Accused-appellant contends that there was no direct evidence linking him as one of the assailants. He claims that while there were ante-mortem declarations made by the victim to the two prosecution witnesses pointing to him as one of the maulers, the trial court, nevertheless, dismissed them as invalid dying declaration since they were uttered by the victim not under a consciousness of an impending death. Neither should such declarations be considered as part of *res gestae* since the victim was drunk and very mad at Teodorico Mante for confiscating his knife while he was being attacked by his assailants. Lastly, the evidence of flight is not sufficient to overcome the constitutional presumption of innocence.

On the other hand, the prosecution argues that: (1) the victim's declarations naming accused-appellant as one of the assailants are admissible in evidence as part of the *res gestae* since they were made immediately after a startling occurrence; (2) the flight of accused-appellant after the incident and his subsequent escape from custody were indicative of his guilt; and (3) there was no improper motive on the part of the prosecution witnesses when they testified against accused-appellant.

In order to warrant a conviction, direct evidence is not always required. Conviction can be had on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to a fair and reasonable conclusion proving that the appellant is the author of the crime to the exclusion of all others.[4] The rules on evidence and jurisprudence sustain the conviction of an accused through circumstantial evidence when the following requisites concur: (1) there is more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[5]

The circumstances proved by the prosecution and relied upon by the trial court to convict accused-appellant clearly satisfied the foregoing requirements. First, the victim, accused appellant and others were together having a drinking spree on the day the mauling happened. Second, the victim declared to Castor Guden immediately after the incident that accused-appellant and two others mauled him can be considered as part of the *res gestae*. Third, the victim told his daughter immediately after the incident, that accused-appellant was one of the persons who mauled him. Fourth, Dr. Tito L. Miranda found that the victim died due to massive hemorrhage in his thoracic cavity caused by severe beating of his breast. Lastly, accused-appellant evaded arrest and subsequently escaped from detention. The foregoing circumstances knitted together proved accused-appellant's culpability beyond reasonable doubt.

Accused-appellant insists that the statements made by the victim to Castor Guden and Rosa Solarte cannot be considered dying declarations for they were made not under the consciousness of an impending death. Neither can they be deemed part of the *res gestae* because the victim was drunk and mad at Teodorico Mante for taking away his knife.

We agree in part with accused-appellant. Prosecution witness Castor Guden testified on what the victim told him after the mauling incident, thus:

FISCAL:

X X X X X X X X

Q. What time did you arrive at your house coming from your farm that afternoon?

A. 4:00 p.m. more or less.

Q. Upon arrival, what did you see?

A. I saw Felix Taylaran whose face was swollen.

Q. Seeing Felix Taylaran's face swollen, what did you ask him?

A. I asked him and he told me that he was beaten by three persons.

Q. Did he mention the names of that three persons?

A. Yes, Teodorico Mante, Frank Lobrigas and Marlito Lobrigas.

x x x x x x x x

FISCAL:

Q.

You mentioned about Frank Lobrigas, Marlito Lobrigas and Teodorico Mante, as the names given to you by Felix Taylaran, are these the same persons whom you identified a while ago?

A. Yes.

Q. What else did you ask of Felix Taylaran?

A. I asked him what was his offense committed why he was beaten?

Q. What was his answer?

A.

He said, "I did not know what was the cause but I saw when I passed by the store, they were drinking and they told me to join them and even bought biscuit and cigarettes."

Q. Did Felix Taylaran tell you how he was mauled?

x x x x x x x x

A. By boxing and kicking.

Q. What else, if any, you can remember your topic that afternoon?

A. That was all, but I told him to stay because it was getting dark.

The above testimony of Castor Guden was corroborated by Rosa Solarte, the daughter of the victim, who testified in this wise:

Prosecutor Ligason:

x x x x x x x x

Q. Now, do you remember having met your father on February 20, 1996?

A. Yes, Sir.

Q. Where did you meet?

A. In our house, he came to me.

x x x x x x x x

Q. What was the purpose of your father in going to your house on February 20, 1996?

A. He reported to me about his bruises.

Q. What time was that, in the morning or in the afternoon?

A. In the afternoon.

Q. Did you see also bruises in the part of his body?

A. Yes, Sir.

Q. Where?

A. At his face and body.

Q. Did he tell you also who cause the bruises?

A. Yes, Sir.

Q. What did he tell you?

A. Frank Lobrigas, Marlito Lobrigas and Teodorico Mante.

The trial court held that although the foregoing declarations cannot be deemed a dying declaration since they do not appear to have been made by the declarant under the expectation of a sure and impending death, the same are nonetheless part of the *res gestae*. However, only the declaration made to Castor Guden are admissible in evidence as such.

A declaration is deemed part of the *res gestae* and admissible in evidence as an exception to the hearsay rule when the following requisites concur: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements must concern the occurrence in question and its immediately attending circumstances.[6] All these requisites concur in the case at bar. The principal act, the mauling of the victim, was a startling occurrence. The declarations were made shortly after the mauling incident while the victim was still under the exciting influence of the startling occurrence, without any prior opportunity to contrive a story implicating accused-appellant. The declaration concerns the circumstances surrounding the mauling of Felix Taylaran. However, the declaration made by the victim to his daughter does not satisfy the second requirement of spontaneity because they were made a day after the incident and the exciting influence of the startling occurrence was no longer present. Nevertheless, we hold that Rosa Solarte's testimony on what her father told her constitutes independent relevant statements distinct from hearsay, and are thus admissible not as to the veracity thereof, but as proof of the fact that they had been uttered.

Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply, hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[7]

Finally, accused-appellant's argument that the trial court's reliance solely on the evidence of flight cannot overcome the constitutional presumption of innocence is not well-taken. In criminal law, flight means an act of evading the course of justice by voluntarily withdrawing oneself to avoid arrest or detention or the institution or continuance of criminal proceedings. The unexplained flight of the accused person may, as a general rule, be taken as evidence having tendency to establish his guilt.[8]

In the case at bar, not only did accused-appellant evade arrest when he went to Cebu under the pretext that he was going to work at Southern Island Hospital, but justice was further frustrated when he escaped from detention with the flimsy excuse that no one was guarding them. These two instances of flight by accused-appellant, taken together with the other circumstances established by the prosecution, support the trial court's finding of accused-appellant's guilt beyond reasonable doubt. Courts go by the biblical truism that "the wicked flee when no man pursueth but the righteous are as bold as a lion." [9]

However, we do not agree with the trial court that the crime committed was murder qualified by the aggravating circumstance of abuse of superior strength. To appreciate abuse of superior strength, there must be a deliberate intent on the part of the malefactors to take advantage of their greater number. They must have notoriously selected and made use of superior strength in the commission of the crime. To take advantage of superior strength is to use excessive force that is out of proportion to the means for self-defense available to the person attacked; thus, the prosecution must clearly show the offenders' deliberate intent to do so.[10]

There was no clear indication in this case that the accused-appellant and his companions purposely used their joint efforts to consummate the crime. Consequently, the crime committed by accused-appellant was only homicide.

The penalty for homicide is reclusion temporal. There being no aggravating or mitigating circumstance, the same shall be imposed in its medium period – from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, accused-appellant shall be entitled to a minimum term to be taken from the penalty next lower, prision mayor – from six (6) years and one (1) day to twelve (12) years.[11]

The trial court awarded P50,000.00 as cumulated actual, exemplary and moral damages. We cannot award actual damages considering that the expenses which the heirs allegedly incurred were not substantiated by evidence other than the sole testimony of the Rosa Solarte. The award of actual damages cannot rest on the bare allegation of the heirs of the victim. Failure to substantiate such claim negates the award for actual damage.[12] The award of exemplary damages must likewise be deleted considering the absence of any aggravating circumstance. Thus, the heirs of Felix Taylaran are only entitled to P50,000.00 as moral damages, which needs no proof other than the fact of death of the victim.[13]

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Bohol, Branch 3, in Criminal Case No. 9694, is MODIFIED. Accused-appellant Frank Lobrigas is found GUILTY beyond reasonable doubt of Homicide for the death of Felix Taylaran and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. Accused-appellant is ORDERED to pay the heirs of the victim moral damages in the amount of P50,000.00 and to pay the cost. The awards of actual and exemplary damages are DELETED for lack of factual and legal basis.

SO ORDERED.

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

[1] Penned by Judge Venancio J. Amila.

[2] Rollo, p. 9.

[3] Rollo, p. 23.

[4] *People v. Bulan*, G.R. No. 133224, January 25, 2002.

[5] *People v. Baniega*, G.R. No. 139578, February 15, 2002.

[6] *People v. Cantonjos*, G.R. No. 136748, November 21, 2001.

[7] *People v. Velasquez*, 352 SCRA 455, 476 [2001].

[8] People v. Dumalahay, G.R. Nos. 131837-38, April 2, 2002, citing People v. Cirilo, 346 SCRA 648, 660 [2000].

[9] People v. Licayan, G.R. No. 144422, February 28, 2002.

[10] People v. Beruega, G.R. No. 142931, April 11, 2002.

[11] Supra, note 8.

[12] People v. Nacario, 346 SCRA 478, 484 [2000].

[13] People v. Labitad, G.R. No. 132793, May 7, 2002.

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