

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HOMER MAGDARAOG Y SALONA, MANUEL MAGDARAOG Y SALONA, DAVID MAGDARAOG Y SALONA AND ARIEL MAGDARAOG Y SALONA, ACCUSED.

G.R. No. 151251. May 19, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The bare denial and alibi of the accused cannot prevail over the positive declarations of an eyewitness who credibly testified that they were the assailants. In the present case, these defenses are not only intrinsically weak, but also lack believable corroboration.

The Case

Homer and Manuel Magdaraog appeal the November 28, 2001 Decision[1] of the Regional Trial Court (RTC) of Pasig City (Branch 163) in Criminal Case No. 118229-H, finding them guilty of murder and sentencing them to reclusion perpetua. The dispositive part of the Decision is worded thus:

“WHEREFORE, accused Homer Magdaraog and Manuel Magdaraog are hereby convicted of the crime of murder under Article 248 of the Revised Penal Code and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs.

“The accused are further sentenced to pay the legal heirs of the victim actual damage[s] in the amount of P30,000.00, P50,000.00 as civil indemnity and P50,000.00 by way of moral damages with interest at the rate of 12% per annum from this date until fully paid.” [2]

The Amended Information,[3] dated July 26, 2000, charged appellants together with their two other brothers, David and Ariel Magdaraog, as follows:

“On or about May 8, 2000, in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with an icepick with intent to kill, and by taking advantage of superior strength, evident premeditation and by means of treachery, did then and there willfully, unlawfully and feloniously stab one Angel Martinez Jr. y Agonos, on the vital parts of his body, thereby inflicting upon the latter multiple stab wounds which directly caused hi[s] immediate death.”[4]

Upon their arraignment on June 13, 2000,[5] Homer and Manuel Magdaraog, assisted by their counsel de parte,[6] pleaded not guilty. The two other accused -- David and Ariel Magdaraog -- were and have remained at large. Hence, trial in regard only to appellants proceeded in due course. Thereafter, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief,[7] the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as

follows:

“On May 8, 2000, on or about 5:00 P.M., Homer, Manuel and David Magdaraog arrived at the vulcanizing shop of Rogelio Brazal, located at AT[U] Site, Fort Bonifacio, Taguig, and had a talk with their youngest brother, Ariel, who worked as a tireman at the shop. Thereafter, the Magdaraog brothers, together with Rogelio Brazal and a certain Salvador A[suela], Jr., had a drinking spree at the vulcanizing shop.

“Around 9:30 in the evening, they transferred to the videoke restaurant just beside the vulcanizing shop. A little past 10:00 P.M., the owner of the restaurant told them that it was closing time and so Rogelio proceeded back to his vulcanizing shop together with Salvador. After a few minutes, Rogelio also saw the Magdaraog brothers leave the restaurant and, passing by the vulcanizing shop, the brothers told Rogelio that they were leaving.

“What happened next was that Rogelio heard a commotion outside his shop and when he looked out he saw Angel Martinez, another tireman at the vulcanizing shop, being chased by the Magdaraog brothers. When Angel stumbled and fell down, he was mobbed and mauled by the brothers. Rogelio ran towards Angel and the brothers left. Rogelio lifted Angel who was already unconscious and sought the help of the people near the premises. Angel was brought to the hospital but he did not reach the hospital alive.

“The incident was immediately reported to the police and investigators arrived at the place. During the investigation, Rogelio Brazal saw Homer Magdaraog walking near the place of the incident. He was arrested, and brought to the Southern Police District the following day. Manuel was spotted near the vulcanizing shop on May 9, 2000 and was invited by the police for questioning and was later arrested.

“Dr. Rolando C. Victoria conducted the post-mortem examination of the body of Angel Martinez and found multiple punctured wounds at the left side and back left side of the anterior abdominal wall. The most fatal wound inflicted was the punctured wound at the back of the abdomen. Aside from contusions and abrasions, the body of the victim bore fifteen (15) punctured wounds, ten (10) of which were fatal.”[8]

Version of the Defense

In their Brief,[9] appellants submit their own version of the facts as follows:

“HOMER MAGDARAOG averred that on 8 May 2000, at around 10:30 in the evening, he, together with Rogelio Brazal, Manuel Magdaraog, Ariel Magdaraog, David Magdaraog, Salvador Asuela and Eleazar Miday were drinking at the videoke restaurant located at the corner of At[u] St., Fort Bonifacio besides the vulcanizing [shop] of Rogelio Brazal. Eleazar Miday invited him because it was the [former’s birthday]. From the said birthday celebration, he alone went home at around 10:00 o’clock in the evening [to his and Ariel’s] residence in Bayan-[B]ayanan, Marikina City. He was not able to reach their home because he was arrested by the military police and was brought to the South Sector where he was investigated. He denied any involvement in the killing of Angel Martinez, Jr. In fact, he does not have any misunderstanding with the victim. He learned that Angel Martinez was stabbed in a rumble when he was already on his way home. He further testified that the rumble started inside the videoke restaurant when somebody hit his face. He did not recognize the person who hit his face because after he was hit, he felt dizzy and fell down. However, because there was already a rumble, he immediately ran away and went home.

“MANUEL MAGDARAOG averred that on 8 May 2000 at around 5:00 o’clock in the afternoon, he, together with Homer Magdaraog, Ariel Magdaraog, David Magdaraog, Eleazar M[i]day, Salvador Asuela and Rogelio Brazal were drinking in the vulcanizing shop owned by Rogelio Brazal located at At[u], Fort Bonifacio. They started drinking at 3:00 o’clock in the afternoon. At around 5:00 o’clock in the afternoon, they went inside the videoke restaurant near the vulcanizing shop. While they were already drinking inside, he went to the comfort room to urinate. When he went out of the comfort room, he saw people scampering. Upon seeing Homer, [the latter] told him that there was a rumble[;] that Ariel stabbed Angel when the latter boxed the former; and that

the fist fight started [in] the restaurant followed by a chase. He was the only one who was able to go home that night in Bicutan because Homer was arrested by the police near the place of [the] incident. Upon reaching home, his other brother Ariel arrived and told him that he [Ariel] stabbed Angel. Thereafter, Ariel left and went to the house of their auntie[,] also in Bicutan. At present, he does not know where [Ariel is]. The following day, when he visited his brother, Homer, in the South Sector, Fort Bonifacio Jail, Rogelio Brazal pinpointed him and implicated him in the stabbing of Angel Martirez. Thereafter, without having [the chance to talk] to Rogelio, the latter left and he was hailed.”[10]

Ruling of the Trial Court

The court a quo accorded full faith and credence to the testimony of Prosecution Witness Rogelio Brazal, who positively identified appellants as the persons who had chased and ganged up on Angel Martirez Jr. when he fell to the ground. The trial court added that Brazal’s failure to see the weapon used to stab the victim was of no moment. It pointed out that a combination of all the pieces of circumstantial evidence, presented not only by the prosecution but also by the defense, clearly and convincingly established the participation of all the accused in mauling, stabbing and eventually killing Martirez.

Appellants’ defense, consisting of denial and alibi was rejected thus:

“The accused’ defense of denial and alibi is undeserving of serious consideration and credence. Such negative and self-serving assertion of the accused cannot prevail over the positive and credible testimonies of Rogelio [Brazal] and PO2 Wilfredo Lim[,] to both of whom no improper motives had been attributed. It is the view of the Court that the story of the accused is an eleventh hour concoction to evade criminal liability.”[11]

The court a quo held that the killing was qualified by abuse of superior strength. It further held that there was conspiracy, as evidenced by the acts of the accused -- simultaneously chasing and ganging up on the victim, as well as helping one another in mauling him when he fell to the ground.

Hence, this appeal.[12]

Issues

In their Brief, appellants raise the following alleged errors for our consideration:

“I.

The court a quo gravely erred in giving full faith and credence to the testimony of prosecution witness Rogelio Brazal.

“II.

The court a quo gravely erred in finding [the] accused-appellants guilty beyond reasonable doubt of the crime of murder.”[13]

Essentially, they question the sufficiency of the prosecution evidence, consisting mainly of the testimony of a single eyewitness.

The Court’s Ruling

After a careful scrutiny of the evidence on record, we sustain the conviction of appellants, but modify the award of civil liabilities.

Main Issue:

Sufficiency of Prosecution Evidence

Pertinently, the determination of the main issue hinges on the credibility of Rogelio Brazal, the lone prosecution eyewitness. Appellants cast doubt on his presence at the scene of the alleged crime at the time of its commission. They submit that he did not really witness the stabbing of Angel Martirez Jr. Their claim is based on the statement

of Brazal during the cross-examination that he did not see the weapon used by the perpetrators. Such lapse allegedly rendered his testimony patently unbelievable, for to be present at the scene of the crime yet not see the weapon used by the assailants does not conform to ordinary human experience and observation. They conclude that when Brazal arrived at the locus criminis, he merely saw Martinez lying on the ground, but not really who had ganged up on the victim -- who had mauled, stabbed and killed him.[14]

We are not persuaded.

It is doctrinal that the evaluation by the trial court of the credibility of testimonies is accorded the highest respect, for it has the untrammelled opportunity to observe directly the demeanor of the witnesses and thus to determine whether they are telling the truth. [15] In the present case, appellants have not shown any reason for us to overturn the findings of the RTC. An overall scrutiny of the records leads us to no other conclusion than that the trial court was correct in finding that the accused-appellants were responsible for the killing of the victim.

In plain words, Eyewitness Brazal clearly detailed the sequence of events that had transpired on the evening of May 8, 2000:

“Q

When Homer, Manuel and David arrived at your vulcanizing shop, what happened, if any?

A The brothers talked and we had a drinking spree.

Q When you said ‘kami nag-inuman’, to whom are you referring as ‘kami’?

A I, Salvador ‘Junior’ Asuela and the brothers, Homer, Manuel, David and Ariel.

Q What else happened, if any, Mr. Witness?

A At about 9:30 we transferred and proceeded to the Videoke Restaurant beside my vulcanizing shop.

Q What happened, if any?

A We sung happily, thereafter, the owner told us that it is already closing time.

Q What else happened?

A Salvador and I proceeded to my vulcanizing shop.

Q What else happened after that?

A Then, the group went out and bade me goodbye, and I told them to take care of themselves.

Q What else happened after that?

A

I heard a commotion and when I looked out I saw my tireman, Angel Martinez, being chased by the group of the brothers, then Angel fell down and that was the time when he was mobbed and hit by the brothers (dinumog ng magkakapatid at binanatan).

Q And, what happened after you saw the group of the accused mauling the victim?

A I ran to the place then I saw the brothers leaving Martinez behind.

Q What else did you do?

A I lift [Angel] Martirez who was then unconscious and I sought the help of the people who are in the premises.

Q What happened next, if any?

A He was boarded on a jeep and brought to the hospital but I did not go with them anymore.”[16]

On cross-examination, he testified thus:

“Q Mr. Witness, when the restaurant was about to close shop you were with the same group when you exit[ed] from that place at the same time?

x x x x x x x x

A I was ahead and I went to my vulcanizing shop.

Q You left them for how long before they came out?

A I cannot remember how long, but after a few minutes they went out.

Q You really don’t know when they went outside because you went ahead, isn’t it?

A It was past 10:00.

Q Did you see them c[o]me out of the place?

A Yes, Sir, because they told me they’re leaving.

Q

You did not see them c[o]me out of the place but you know they went out because they asked your permission that they will go out, isn’t it?

A I saw them went out because there was no other way going outside except the way along my vulcanizing shop.

Q Mr. Witness, you did not see any weapon when the group was allegedly mauling this Angel Martirez, isn’t it?

A None, Sir.

Q What you saw is that somebody was mauling somebody, isn’t it?

A Yes, Sir.

Q

You did not even know who was mauling who, until such time that you went to the place and discovered that there was someone who mauled someone, isn’t it?

A There was light and I saw that Angel was mauled.”[17]

There is no doubt that Brazal witnessed the assault on the victim by appellants and their two other brothers, Ariel and David Magdaraog. Brazal was firm and consistent in his testimony, thus revealing his certainty about what he saw. Indeed, the striking consistency and definiteness of his testimony and of his narrations in his Sworn Statement[18] executed on May 9, 2000 -- only a day after the incident -- manifest utter truthfulness or veracity.

Appellants and their brothers were the only persons Brazal saw ganging up on and simultaneously mauling Martirez when the victim fell to the ground. After the brothers ran away, Brazal immediately went to the unconscious Martirez and sought help in bringing him to the hospital, but the latter did not make it. The series of

events as narrated by the lone eyewitness firmly point to the accused, and to no other, as the perpetrators of the crime.

Brazal was categorical and positive in identifying appellants as the assailants. He likewise remained unyielding all throughout his testimony.

This Court has consistently held that the testimony of a lone eyewitness, if found by the trial court to be positive and credible, is sufficient to support a conviction. This guiding principle holds, especially when the testimony bears the earmarks of truth and sincerity; more so when it is delivered spontaneously, naturally and straightforwardly.[19]

The failure of Brazal to see the weapon used by the assailants does not detract from his positive identification of them. Such weapon is not, after all, an element of either homicide or murder.[20] As it has been established that the victim died from multiple puncture wounds, the failure of Brazal to see the weapon is of no consequence and cannot diminish his credibility.

It must be pointed out that since puncture wounds are usually small in diameter, they are not immediately visible.[21] Furthermore, such small wounds usually do not spout plainly visible quantities of blood,[22] as the bleeding normally occurs inside.[23]

It is a common experience that the perception of individuals may vary, depending on their location and the extent of their peripheral vision.[24] The failure of Brazal to see the weapon that was used may reasonably be explained by his position relative to appellants and the other accused, as well as by the fact that he saw them ganging up on the victim who was lying on the ground.

This Court has long acknowledged the verity that different human minds react differently when confronted by a sudden and shocking event; and that there are witnesses who may ignore certain details that might have appeared to them to be insignificant at the time, but that would seem noteworthy to other persons under the same circumstances.[25] Witnesses are not expected to remember perfectly every single detail of an incident.[26]

Furthermore, what is vital in the testimony of Brazal is not his knowledge of the weapon used, but the fact that he saw appellants ganging up on Martirez right before the victim died. The identification and the presentation of the murder weapon are not indispensable to the prosecution's cause when the accused has positively been identified.[27]

It has not been shown that Brazal was moved by any ill motive to testify falsely against appellants. Even they admitted, on cross-examination, that they had no personal grudge against or misunderstanding with him.[28] Hence, his positive and categorical declarations on the stand under solemn oath should be given full faith and credence.[29]

Furthermore, the fact that Brazal is the cousin of the victim,[30] far from tainting the former's testimony with bias, even renders it more credible. It would be unnatural for a relative, who would normally be interested in bringing the real culprits to justice, to accuse someone else of having committed the crime.[31]

Denial and Alibi The presence of appellants at the scene of the crime was not disputed, although both of them denied any responsibility. Homer Magdaraog claimed that when he was hit on the face, he felt dizzy and fell down; but he immediately stood up and left the restaurant, as there was already a rumble and he did not want to get involved. On the other hand, Manuel Magdaraog claimed that he was in the comfort room urinating when the killing occurred, the truth of which was denied by Brazal on rebuttal.[32] Appellants insist that their mere presence at the scene of the incident did not mean that they participated in the crime. We are not convinced.

As against the positive identification by Brazal, all that Homer and Manuel could offer in defense were alibi and denial. After a careful review of the records, we agree with the trial court that their version of the incident is far from credible.

As previously stated, such defense is considered inherently weak and constitutes an “unstable sanctuary for felons” because of the facility with which it can be concocted. [33] Between the positive and categorical narrations of Brazal and the negative averment of appellants, the former is entitled to greater evidentiary weight.[34] This principle holds true especially in this case, in which the specifics of the alibi dovetail together too neatly to deserve credence. Furthermore, the alibi is supported solely by appellants themselves.

Conspiracy

The evidence on record shows conspiracy among appellants and the other accused. Conspiracy is deducible from their acts before, during and after the commission of the crime -- acts indicative of a joint purpose, concerted action and concurrence of sentiment.

To establish conspiracy, it is not essential that there be proof of the existence of a previous agreement to commit a crime.[35] It is sufficient that, at the time of commission, the accused had the same purpose and were united in its execution. In conspiracy, it matters not who among them actually killed the victim. The act of one is the act of all; hence, it is not necessary that all the participants deliver the fatal blow.[36]

Manuel's identification of Ariel as the one who stabbed Martirez does not free the accused from criminal responsibility. By their acts at the time of the aggression, they manifested a common intent or desire to kill him, so the act of one became the act of all. Their coordinated escape from the crime scene further confirmed the existence of conspiracy.

Abuse of Superior Strength

The trial court correctly appreciated the circumstance of abuse of superior strength, considering that the malefactors had taken advantage of their number in ganging up on and mauling the victim as he fell to the ground -- unarmed, obviously overpowered and helpless. Hence, the trial court did not err in finding appellants guilty of murder.

Despite affirming their conviction, we nonetheless modify the monetary awards.

We affirm the award of P50,000 as civil indemnity ex delicto for the death of Angel Martirez, and P50,000 for moral damages arising from the proven mental suffering of his mother and brother as a result of his untimely death.

The award of P30,000 for actual damages is improper, however for only the amount of P20,000 representing funeral expenses was duly proven by competent documents[37] during the trial. In *People v. Andres*,[38] the Court said:

“[W]e declared in the case of *People v. Villanueva* that:

‘... when actual damages proven by receipts during the trial amount to less than P25,000, as in this case, the award of temperate damages for P25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds P25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.’

“The victim's heirs should, thus, be awarded temperate damages in the amount of P25,000.” [39]

In the light of the above ruling, we award the heirs of Martirez the amount of P25,000 as temperate damages, in

lieu of actual damages.

Lastly, loss of earning capacity cannot be awarded in the absence of competent proof therefor. "Compensation for lost income is in the nature of damages and requires due proof of the amount of the damage suffered. For loss of income due to death, there must be unbiased proof of the average income of the deceased. Also, the award for lost income refers to his net income; that is, his total income less his average expenses." [40] In this case, Henry Martirez gave only a bare self-serving testimony on the income of his brother. [41] No proof of the latter's expenses was adduced.

WHEREFORE, the assailed Decision is AFFIRMED, with the MODIFICATION that the award of P30,000 for actual damages is deleted. In lieu thereof, however, the heirs of Angel Martirez Jr. are awarded the amount of P25,000 as temperate damages. Costs against appellants.

SO ORDERED.

Ynares-Santiago, Carpio and Azcuna, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Rollo, pp. 16-21; records, pp. 116-121. Written by Judge Leili Suarez Acebo.

[2] Assailed Decision, pp. 5-6; rollo, pp. 20-21; records, pp. 120-121.

[3] Signed by Prosecutor II Eduardo R. Garcia. The earlier Information dated April 3, 2000, was amended to include the two other accused, David Magdaraog y Salona and Ariel Magdaraog y Salona.

[4] Rollo, p. 6; records, p. 40.

[5] Order dated June 13, 2000; records, p. 17.

[6] Atty. Franciso de Borja; later replaced by counsel de oficio, Atty. Danilo T. Lim.

[7] Rollo, pp. 59-74. Signed by Assistant Solicitors General Carlos N. Ortega and Renan E. Ramos and Solicitor Ma. Lourdes B. Alarcon-Leones.

[8] Appellee's Brief, pp. 3-5; rollo, pp. 63-65. Citations omitted.

[9] Rollo, pp. 33-43. Signed by Attys. Amelia C. Garchitorena and Pastor Archimedes P. Morales of the Public Attorney's Office (PAO).

[10] Appellants' Brief, pp. 5-6; rollo, pp. 41-42.

[11] Assailed Decision, p. 14; rollo, p. 19; records, p. 119.

[12] This case was deemed submitted for decision on September 9, 2003, upon this Court's receipt of appellants' Manifestation that they were no longer filing a Reply Brief. Appellants' Brief was received by the Court on December 26, 2002, and appellee's Brief on May 6, 2003.

[13] Appellants' Brief, p. 1; rollo, p. 37. Original in upper case.

[14] Id., pp. 8 & 44.

[15] People v. Pacuancuan, GR No. 144589, June 16, 2003; People v. Gallego, GR No. 127489, July 11, 2003; People v. Rios, 389 Phil. 338, June 19, 2000.

- [16] TSN, July 25, 2000, pp. 5-7.
- [17] TSN, July 25, 2000, pp. 13-15.
- [18] Exhibit “A”; records, p. 67.
- [19] *People v. Hillado*, 367 Phil. 29, May 24, 1999.
- [20] *People v. Piedad*, 393 SCRA 488, December 5, 2002.
- [21] Solis, *Legal Medicine*, 1987, p. 271.
- [22] *Ibid.*
- [23] *Ibid.*
- [24] *People v. Visaya*, 352 SCRA 713, February 26, 2001.
- [25] *Ibid.*
- [26] *People v. Rios*, *supra*.
- [27] *People v. Fernandez*, 385 SCRA 38, July 23, 2002.
- [28] TSN, March 27, 2001, p. 13; TSN, July 31, 2001, p. 13.
- [29] *People v. Caballero*, 400 SCRA 424, April 2, 2003; *Ureta v. People*, 387 SCRA 359, August 15, 2002; *People v. Baccoy*, 388 SCRA 641, September 14, 2002; *People v. De la Cruz*, 349 SCRA 124, January 16, 2001; *People v. Arellano*, 390 Phil. 273, June 30, 2000.
- [30] See Exhibit “A”; records, p. 67.
- [31] *People v. Lachica*, GR No. 131915, September 3, 2003; *People v. Bagcal*, 350 SCRA 402, January 29, 2001.
- [32]
- “Q Manuel Magdaraog testified that he was inside the comfort room when the alleged stabbing and rumble took place on May 8, 2001, what can you say to that?
- A That is not true, sir[,] All of them went out of the video bar.
- Q That he has nothing to do with the rumble, what can you say to that?
- A That night, he was one of those who ganged up Angel Martinez.” (TSN, November 6, 2001, p. 4.)
- [33] *People v. Visaya*, *supra*.
- [34] *People v. Seduco*, 349 SCRA 147, January 16, 2001.
- [35] *People v. Seduco*, *supra*.
- [36] *People v. Caballero*, *supra*; *Ureta v. People*, *supra*.
- [37] Exhibit “D”; records, p. 70.
- [38] GR Nos. 135697-98, August 15, 2003.
- [39] *Id.*, pp. 18-19, per Corona, J.
- [40] *People v. Esponilla*, GR No. 122766, p. 24, June 20, 2003, per Callejo Sr., J.; See also *People v. Lachica*,

supra; People v. Esponilla, supra; People v. Cuenca, 375 SCRA 119, January 29, 2002.

[41] TSN, August 15, 2000, p. 13.

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