

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER DELA CRUZ Y DOE, APPELLANT.

G.R. No. 152176. October 01, 2003

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 Calabanga, Camarines Sur, Branch 63, in Criminal Case No. RTC '99-323, finding appellant Roger Dela Cruz y Doe guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the heirs of the victim the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages, and to pay the costs.

On December 28, 1998, an Information for Murder was filed against Roger Dela Cruz y Doe. The Information reads:

That on or about 10:00 o'clock in the evening of August 29, 1998 at Bgy. Cabanbanan, Calabanga, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with treachery, while armed with a deadly weapon - an icepick, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one, Mark Lester Resterio Suarez, inflicting upon the latter one (1) fatal wound on his chest, which injury he sustained caused his death, to the prejudice of his heirs.

ACTS CONTRARY TO LAW.[2]

Appellant was arraigned on June 30, 2000 and pleaded not guilty.[3] Trial on the merits thereafter ensued.

Prosecution witness Joseph Sanchez testified that at 10:00 p.m. of August 29, 1998, he was walking along Barangay Cabanbanan, Calabanga, Camarines Sur together with his friends, Mark Lester Suarez and Edgar delos Santos, on their way towards Barangay Cagsao, Calabanga, Camarines Sur. He stopped at a store to buy a cigarette. Suddenly, he heard Mark shout that he was stabbed. When he looked over his shoulder, he saw appellant, running away. Mark told him that it was appellant who stabbed him. Sanchez ran to the house of Mark's mother, Milagros Suarez, to tell her that Mark had been stabbed by Roger dela Cruz. Together, he and Milagros rushed Mark to the Bicol Medical Center but he died on the way.

Milagros testified that she incurred P8,500.00 for the funeral expenses, P2,000.00 for the wake and P750.00 for church rites.

Chief Tanod Felix delos Santos of Barangay Cabanbanan, who responded to the stabbing incident, narrated that he was awakened by the shouts of Sanchez that somebody had been stabbed. He and the other tanods went with Sanchez to the place where Mark was lying about fifteen meters from his residence. He saw Mark's wound on the right side of his chest and ordered somebody to call the police from the Cabanbanan Kababayan Center. He asked Mark who stabbed him, and the latter answered, "Roger." After several days, he learned that Mark died.

Dr. Daniel Y. Tan, who performed the necropsy on the cadaver, found that the cause of the victim's death was

hypovolemic shock secondary to mortal stab wound. He testified that the victim sustained a stab wound which pierced into the right lobe of the liver, diaphragm, right lung lobe and right ventricle of the heart. The wound was fatal.[4]

In his defense, appellant testified that on August 23, 1998, he went to Manila with his friend, Victorio Delfin, to look for a job. Prior to that, he worked as operator of JBL Mobile Disco for one week before he left for Manila. When he failed to obtain employment in Manila, he went to his sister and brother-in-law's house at Barangay Buck Estate, Alfonso, Cavite on August 27, 1998. His mother also stayed in his sister's house. On August 29, 1998, he started working as a construction worker in Sta. Lucia, Tagaytay. The project lasted for three weeks. He looked for another job but he was not able to find one.

When appellant learned that a case was filed against him, he returned to Cabanbanan, Calabanga, Camarines Sur. On June 9, 2000, he was arrested. He testified that he knew the victim Mark, who was his friend.

Zenaida dela Cruz, appellant's mother, and Victorio Delfin corroborated appellant's testimony.

On October 13, 2001, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, accused Roger dela Cruz y Doe is hereby convicted of the crime of Murder as charged. He is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Mark Lester Suarez the following damages:

- P50,000.00 as civil liability for his death;
- P50,000.00 as moral damages; and
- to pay the costs.

SO ORDERED.[5]

Hence this appeal, based on the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES JOSEPH SANCHEZ AND FELIX DELOS SANTOS.

II

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY ON THE ASSUMPTION THAT INDEED ACCUSED-APPELLANT WAS THE ONE WHO STABBED THE VICTIM.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[6]

We agree with the trial court that the anti mortem statement of the victim cannot be considered a dying declaration as the same was not made with awareness of his impending death. In *People v. Bautista, et al.*, [7] we held that it is not indispensable that a declarant expires immediately thereafter. It is the belief of an impending death and not the rapid succession of death, in point of fact, that renders the dying declaration admissible.

Nonetheless, his declaration is admissible as part of the *res gestae*. 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.[8] All these requisites are present in this case. The principal act, i.e., the stabbing, was a startling occurrence. The declaration was made right after the stabbing while the victim was still under the exciting influence of the startling occurrence, without any prior opportunity to contrive a story implicating the appellant. The declaration concerns the one who stabbed the victim. Thus, the trial court correctly appreciated the testimonies of prosecution witnesses Sanchez and Delos Santos on what the victim told them as part of the *res gestae*.

Basic is the rule that the 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 it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[9] None of the aforesaid exceptions obtains in the case at bar.

We cannot sustain appellant's defenses of denial and alibi. Denial is intrinsically a weak defense. It must be supported by strong evidence of non-culpability in order to be credible. Correspondingly, courts view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[10]

In the case at bar, appellant claimed that on August 23, 1998, he went to Manila with Victorio Delfin to look for a job. When he was not able to find any job, he went to his sister's house in Cavite on August 27, 1998. He started working as a construction worker in Sta. Lucia, Tagaytay on August 29, 1998. Appellant, however admitted that it was his first time to look for a job outside Cabanbanan, Camarines Sur. On the other hand, prosecution witness Sanchez testified that he saw appellant leaving the scene of the crime on that fateful night. Time-tested is the rule that between the positive assertions of prosecution witness and the negative averments of appellant, the former indisputably deserve more credence and evidentiary weight.[11]

Moreover, appellant fled from the scene of the crime after the stabbing incident. The trial judge had issued a warrant for his arrest on February 17, 1999 but the authorities arrested him only on June 9, 2000. The flight of an accused is an indication of his guilt or of a guilty mind.[12] Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.[13]

We agree with appellant that the crime committed was not murder. The qualifying circumstance of treachery was not sufficiently established by the prosecution. 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.[14]

The prosecution witness did not see the actual stabbing of the victim. Therefore, there is no way of determining on how the attack was initiated. In the same way that no testimony would prove that the appellant contemplated upon the mode to insure the killing.

Therefore, the crime committed by appellant is homicide. Under Article 249 of the Revised Penal Code, homicide is punished by reclusion temporal. There being no mitigating or aggravating circumstance, the penalty shall be imposed in its medium period. Appellant is entitled to the benefits under the Indeterminate Sentence Law, and may thus be sentenced to an indeterminate penalty the minimum term of which shall be taken from the penalty next lower in degree, namely, prision mayor. Thus, appellant may be sentenced to an indeterminate penalty ranging from 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.

In keeping with prevailing jurisprudence, the heirs of the deceased are entitled to the amount of P50,000.00 by way of civil indemnity ex delicto. The moral damages awarded in the amount of P50,000.00 is affirmed, there being proof that because of Mark Lester's death, his mother Milagros Suarez suffered wounded feelings, mental anguish, anxiety and similar injury.

However, the trial court failed to award actual damages. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[15] In the case at bar, the prosecution was able to substantiate the claim for funeral expenses in the amount of P8,500.00 with receipts.[16]

In the case of *People v. Villanueva*,[17] it was held that when actual damages proven by receipts during the trial amount to less than P25,000.00, as in the present case, the award of temperate damages for P25,000.00 is justified in lieu of actual damages for a lesser amount. This Court ratiocinated that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages amounting to less than P25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages.

WHEREFORE, in view of the foregoing, the appealed decision of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 in Criminal Case No. RTC '99-323, is MODIFIED. As modified, appellant Roger dela Cruz y Doe is found GUILTY beyond reasonable doubt as principal of the crime of Homicide and is sentenced to suffer the indeterminate penalty ranging from 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. He is further ordered to pay the heirs of the deceased the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as temperate damages.

Costs de oficio.

SO ORDERED.

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

[1] Penned by Judge Freddie D. Balonzo.

[2] Records, p. 1

[3] Records, p. 43.

[4] Records, p. 5.

[5] Records, p. 137.

[6] Rollo, p. 53.

[7] 344 Phil. 158 (1997), citing *People v. Sabio*, G.R. No. L-26193, 27 January 1981, 102 SCRA 218, 230-231 (1981) and *U.S. v. Virrey*, 37 Phil. 625 (1918).

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

[9] *People v. Diaz*, G.R. No. 133737, 13 January 2003, citing *People v. Pacina*, 338 SCRA 195 (2000).

[10] *People v. Tuppal*, G.R. Nos. 137982-85, 13 January 2003, citing *People v. Batidor*, 362 Phil. 673 (1999).

[11] *People v. Patco, et al.*, G.R. No. 140217, 21 February 2003, citing *People v. Natore*, G.R. No. 131874, 22 August 2002.

[12] *People v. Bracamonte*, 327 Phil. 172 (1996).

[13] *People v. Landicho, et al.*, G.R. No. 116600, 3 July 1996.

[14] *People v. Hate*, G.R. No. 145712, 24 September 2002.

[15] *People v. Acosta*, G.R. No. 140386, 29 November 2001; *People v. Suelto*, G.R. No. 126097, 8 February 2000, 325 SCRA 41 and *People v. Samolde*, 376 SCRA 632 (2000).

[16] *Records*, p. 88.

[17] G.R. No. 139177, 11 August 2003.

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