

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS MORILES, JR., Y QUEBEC, APPELLANT.

G.R. No. 153248. March 25, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the decision[1] dated February 15, 2002, in Criminal Case No. 2883, of the Regional Trial Court of Carigara, Leyte, Branch 13, finding herein appellant Jesus Moriles, Jr., guilty of murder and imposing upon him the penalty of death, and ordering him to pay the heirs of the victim, Gary Basco, the sum of P75,000.00 as civil indemnity, P19,000.00 as actual damages, and P50,000.00 as moral damages.

In an Information dated May 19, 1999, the Provincial Prosecutor of Leyte accused Jesus Moriles, Jr., of murder, as follows:

That on or about the 13[th] day of March, 1994, in the municipality of Capoocan, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and stab one GARY BASCO with the use of a knife (pisao) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

- Rigor mortis

- Stab wound at the 6[th] ICS directed upward 2-1/4 cm, in length 13-1/2 cm. depth, 7 cm. from the left median line.

Internal Findings

- Presence of blood and blood clots inside the Thoracic Cavity.

- Penetrating wound ½ cm. wide left lobe of the lung.

- Penetrating wound ½ cm. wide at the left portion of the heart.

which wounds caused the death of said Gary Basco.

CONTRARY TO LAW.[2]

A warrant of arrest was issued against Moriles immediately following the fatal stabbing incident in March 1994. But it was not until April 11, 1999 that the long arm of the law finally caught up with him.[3]

On June 17, 1999, when he was arraigned with the assistance of counsel, he pleaded not guilty.[4] The case then proceeded to trial.

Evidence presented by the prosecution sought to establish its version of the fatal incident. At around 9:00 p.m. of March 12, 1994, a benefit dance was held at Barangay Lemon, Capoocan, Leyte. The dance lasted until around 1:00 a.m. the following day. Present were the victim Gary Basco, appellant Moriles and prosecution eyewitness

Francisco Dadis, Jr.,[5] among others. Basco was not from Capoocan. He was from Abuyog, Leyte.[6] However, he frequented Capoocan as he was courting a local belle Dayluz Octavio, related to Dadis.[7] Basco and Dadis were strangers to each other. On meeting at the dance, they struck an instant friendship and shared some liquor and talked about women.[8] Dayluz was present at the dance. After the dance ended, Basco and Dadis proceeded to the girl's house so Basco could pay court.[9]

Soon thereafter or at around 2:00 a.m. in the early morning of March 13, 1994, Basco and Dadis left the girl's residence. They were walking beside the river when, without warning, but in full sight of eyewitness Dadis,[10] appellant suddenly appeared from behind and stabbed Basco once in the chest. The scene was illuminated by a street fluorescent lamp some five meters away.[11] This made it easy for Dadis to see appellant, with whom Dadis was very familiar. They were after all neighbors.[12] Dadis identified appellant in open court as Basco's assailant.

Dadis testified that the suddenness of the assault caught Basco and him off-guard. Basco had no opportunity to defend himself while Dadis said he had no chance to come to Basco's defense.

Appellant's weapon was a small bolo, locally known as pisao, about 6-1/2 inches long, inclusive of the handle.[13] Appellant was able to keep the pisao out of sight by keeping it in line with his arm until the very moment of the stabbing,[14] said Dadis. Stab wounds resulted in Basco's death.

Dr. Bibiana O. Cardente, municipal health officer of Capoocan, Leyte, examined the victim's cadaver. Her postmortem findings indicated that the victim died of severe hemorrhage due to a stab wound at the chest.[15] The contents of the postmortem report as well as Dr. Cardente's expertise were admitted without any opposition by the defense.[16]

In his defense, appellant interposed denial and alibi. He claimed that at the time of the incident, he was drinking beer at the house of Montano Gagante.[17] He admitted being at the benefit dance at around 10:00 p.m. of March 12, 1994, but claimed that after an hour, he left with a certain Domingo Alegado.[18] They headed toward Gagante's store, where they continued drinking.[19] Due to a sudden rain, the dance ended at 1:00 a.m. of March 13, 1994. At about that time, Alegado and Gagante joined appellant's group at Gagante's house. They continued to drink beer, gin, and coke until 5:00 a.m. of March 13, 1994. Thereafter, appellant staggered home.[20]

Appellant further testified that at around 6:00 a.m. on March 13, 1994, Francisco Dadis, Jr., went to his house. Dadis asked appellant to go with him to Dadis' residence. There they were met by two policemen who questioned appellant about the stabbing incident. Appellant denied any knowledge of the incident and was allowed to go home.[21] He denied that he ever went into hiding. He disclaimed any knowledge of a warrant of arrest having been issued against him.

In his testimony for the defense, Montano Gagante corroborated appellant's version of events.[22] Gagante testified that his house was only eighty meters away from the place where the benefit dance was held.[23] However, on cross-examination, he admitted that the place of the alleged stabbing incident was only thirty meters away from the place where the benefit dance was held.[24]

The trial court disbelieved the appellant's defense while it found the prosecution's version worthy of credence. Accordingly, the court rendered judgment as follows:

WHEREFORE, premises considered, pursuant to Sec. 6, Art. 248 of the Revised Penal Code, as amended and subsequently amended by R.A. No. 7659, otherwise known as the Death Penalty Law, the Court found accused JESUS MORILES, JR., GUILTY beyond reasonable doubt of the crime of Murder and sentenced to suffer the Maximum penalty of DEATH and indemnify the heirs of Gary Basco the amount of Seventy Five Thousand

(P75,000.00) Pesos, pay actual damages in the amount of Nineteen Thousand (P19,000.00) Pesos and moral damages in the amount of Fifty (P50,000.00) Thousand Pesos and pay the Cost.

SO ORDERED.[25]

Hence, this automatic review.

In his Brief, the appellant ascribes the following errors to the trial court:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WITHOUT CONSIDERING THE ATTENDANT CIRCUMSTANCES OF THE CASE.

III

THE A COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

IV

THE COURT A QUO GRAVELY ERRED IN AWARDING ACTUAL DAMAGES.[26]

Simply put, the issues before us concern: (1) the sufficiency of the prosecution's evidence to prove the appellant's guilt beyond reasonable doubt; (2) the correctness of the penalty imposed; and (3) the propriety of the award of actual damages.

On the first issue, appellant faults the trial court for giving credence to the testimony of the prosecution eyewitness, Francisco Dadis, Jr. He insists that Dadis could not have identified him as the malefactor since the alleged incident happened at 2:00 a.m. at a place where the illumination was poor. Furthermore, Dadis admitted he was some four meters away from Basco when he was stabbed. Appellant contends that under the foregoing conditions, the possibility that Dadis could have recognized him as the offender was unlikely.

For the State, the Office of the Solicitor General (OSG) submits that not only was the scene of the crime well lighted, as shown by the records, but also according to appellant's own admission, Dadis knew him since childhood. Appellant and Dadis were neighbors. Moreover, appellant could not cite any reason why Dadis would bear witness against him falsely. Hence, the OSG contends, no reversible error could be ascribed to the trial court when it chose to give weight and credence to the testimony of the prosecution eyewitness to convict appellant.

After considering carefully the evidence on record, we find appellant's arguments unavailing. First, nowhere in the record is there a showing that the illumination at the situs criminis was so poor at the time of the incident sufficient to raise doubt on the positive identification by the eyewitness of the appellant as the assailant. Second, appellant himself admitted that Dadis and he lived as neighbors and they knew each other since childhood.[27] Appellant's physical features, build, and movements were familiar to the witness, Dadis. Familiarity with the physical features, particularly those of the face, is actually the best way to identify the person.[28] Third, on cross-examination, appellant admitted that there was no bad blood between Dadis and him. Thus, he did not know any reason or motive why Dadis should testify falsely against him.[29] As held in previous cases, where the conditions of visibility are favorable and the witness appears to be unbiased against the man on the dock, his statements as to the identity of the assailant deserve full faith and credence.[30]

Against the positive identification of the appellant by eyewitness Dadis, all that appellant could offer in his defense were denial and alibi. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.[31] Physical impossibility refers to the distance between the place where the appellant was when the crime happened and the place where it was committed, as well as the facility of access between the two places.[32] In this case, the Gagante residence where appellant claimed to be at the time of the incident was located in the same barangay where the fatal stabbing took place. Weak as the appellant's alibi is, it became even weaker when he failed to demonstrate that it was impossible for him to be at the scene of the crime when it was committed.[33]

Noteworthy, after the stabbing incident, appellant took flight. A warrant of arrest against the appellant was issued on January 3, 1995. But it was only on April 11, 1999, that the appellant was taken into custody by the police. For five years, appellant disappeared from view, until the long arm of the law caught up with him. As previously held, the flight of the accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence." [34] Flight evidences guilt and guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.[35]

Appellant's defense, however, questions the trial court's finding of murder. Appellant's counsel contends that, assuming *arguendo*, that indeed he stabbed the victim, there was no direct evidence to show that the attack was sudden and that the victim was deprived of an opportunity to defend himself. The defense points to eyewitness testimony that appellant was some twelve meters away from the victim at the start of the encounter, hence there was no sudden assault upon him by appellant.

For the appellee, the OSG calls attention to the fact that at the time of the attack, the victim was promenading beside a river, unarmed and unsuspecting, enjoying the company of his new found friend, Dadis. There was no premonition, much less recognition of imminent danger to his person from any source. The victim was therefore taken unaware by appellant's sudden assault.

Treachery is present when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[36] What is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself.[37] Stated differently, the essence of treachery is the swift and unexpected attack by an aggressor on an unarmed and unsuspecting victim who does not give any slight provocation, depriving the latter of any real chance to defend himself.[38]

At the time of the fatal stabbing, Basco had just come from the house of the local beauty Dayluz whom he was courting. He was unarmed, walking by the riverside, in the company of a new friend. There had been no altercation between him and appellant at the benefit dance. Although he was not a resident of Barangay Lemon, Capoocan, he was not a total stranger to the place. He had previously visited Lemon with no unusual incident. Then some time after the dance ended, he was stabbed by an assailant who came from behind. Clearly, the sudden execution of the attack was such that it was impossible for the victim to defend himself. Thus, we find that the trial court did not err in appreciating treachery as qualifying the offense to murder.

On the second issue, the prosecution agrees with the defense that it was an error for the trial court to impose the death penalty, absent any aggravating circumstances to warrant its imposition.

The penalty for murder under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659 is reclusion perpetua to death. Since neither aggravating nor mitigating circumstance attended the commission of the

crime, the proper penalty, in conformity with Article 63 of the Revised Penal Code is reclusion perpetua.

On the third issue, the parties are again in agreement that the award of actual damages in the amount of P19,000.00 should be deleted in the absence of evidence, such as receipts, to justify its award. However, the OSG recommends that in lieu thereof, temperate damages should be awarded, as the victim's heirs incurred expenses as a result of his death. Moreover, the award of civil indemnity in the amount of P75,000.00 should be reduced to P50,000.00 to conform with prevailing jurisprudence.

The recommendations of the OSG are well taken. As a rule, claims for actual damages must be supported by evidence.[39] In this case, no receipts were offered to support the funeral expenses claimed by the victim's family. Hence, the award of P19,000.00 in actual damages must be stricken for lack of proof. However, considering that the victim's heirs did incur funeral and other expenses because of his death, the award of temperate damages in the amount of P25,000.00 would be justified.[40] Lastly, concerning the award of civil indemnity, the amount thereof should be reduced to P50,000.00, in line with prevailing case law.[41]

WHEREFORE, the decision dated February 15, 2002, of the Regional Trial Court of Carigara, Leyte, Branch 13, in Criminal Case No. 2883, is **AFFIRMED** with **MODIFICATION**. Appellant JESUS MORILES, JR., y QUEBEC is declared **GUILTY** beyond reasonable doubt of Murder, but the penalty imposed upon him is reduced to reclusion perpetua. He is **ORDERED** to pay the heirs of the late Gary Basco the sum 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., Puno, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug, J., on official business abroad.

Panganiban, J., on official leave.

[1] Records, pp. 81-93.

[2] Id. at 1.

[3] Id. at 11.

[4] Id. at 19.

[5] TSN, 29 July 1999, pp. 10-11.

[6] TSN, 27 October 1999, p. 3.

[7] Supra, note 5 at 9.

[8] Id. at 7-8, 10.

[9] Ibid.

[10] Id. at 3-4.

[11] Id. at 5.

[12] Supra, note 5 at 3.

[13] Id. at 4.

[14] Id. at 13.

[15] Folder of Exhibits, Exh. "A".

[16] TSN, 28 July 1999, pp. 2-3.

[17] TSN, 29 January 2002, p. 3.

[18] Id. at 4. In the corroborative testimony of Montano Gagante, the latter referred to this person as "Dominador Aligano." See TSN, 15 January 2002, p. 5.

[19] Id. at 4.

[20] Id. at 5-6.

[21] Supra, note 17 at 6.

[22] Supra, note 18 at 4-6.

[23] Id. at 5.

[24] TSN, 18 January 2002, p. 5.

[25] Records, p. 93.

[26] Rollo, p. 43.

[27] Supra, note 17.

[28] People v. Rios, G.R. No. 132632, 19 June 2000, 333 SCRA 823, 832 citing People v. Lagnas, G.R. Nos. 102949-51, 28 May 1993, 222 SCRA 745, 757; People v. Reception, G.R. No. 94127, 1 July 1991, 198 SCRA 670, 677.

[29] Supra, note 17 at 8.

[30] People v. Garcia, G.R. No. 129216, 20 April 2001, 357 SCRA 151, 159-160 citing People v. Galanza, G.R. No. 89685, 8 November 1993, 227 SCRA 526, 531; People v. Alvarez, G.R. No. 70446, 31 January 1989, 169 SCRA 730, 738.

[31] People v. Ponsaran, G.R. Nos. 139616-17, 6 February 2002, 376 SCRA 434, 449 citing People v. Saban, G.R. No. 110559, 24 November 1999, 319 SCRA 36, 46.

[32] People v. Pascual, Jr., G.R. No. 132870, 29 May 2002, 382 SCRA 470, 477.

[33] People v. Alajay, G.R. Nos. 133796-97, 12 August 2003, pp. 7-8.

[34] Lucas v. People, G.R. No. 149492, 20 January 2003, 395 SCRA 524, 532 citing People v. Del Mundo, G.R. No. 138929, 2 October 2001, 366 SCRA 471, 483-484.

[35] People v. Acosta, Sr., G.R. No. 140402, 28 January 2003, 396 SCRA 348, 373 citing People v. Rabanal, G.R. No. 119542, 19 January 2001, 349 SCRA 655, 661; People v. Gregorio, G.R. Nos. 109614-15, 29 March 1996, 255 SCRA 380, 392.

[36] People v. Arca, G.R. No. 135857, 18 June 2003, p. 14.

[37] People v. Almedilla, G.R. No. 150590, 21 August 2003, p. 7 citing People v. Lucena, G.R. No. 137281, 3 April 2001, 356 SCRA 90, 103.

[38] *People v. Musa, Jr.*, G.R. No. 137042, 17 June 2003, p. 5 citing *People v. Samson*, G.R. No. 124666, 15 February 2002, 377 SCRA 25, 37.

[39] *People v. Cabical*, G.R. No. 148519, 29 May 2003, p. 13.

[40] *People v. Buayaban*, G.R. No. 112459, 28 March 2003, p. 24; *People v. Abrazaldo*, G.R. No. 124392, 7 February 2003, 397 SCRA 137, 150.

[41] *People v. Sibonga*, G.R. No. 95901, 16 June 2003, p. 21.

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