

RICKY BASTIAN, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 160811. April 18, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

COMPARED to appellate magistrates who merely read and rely on the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them, the trial judge is in a better position to calibrate the testimonies of the witnesses at the stand.

The bare claim of responsibility for the killing of the victim by the New People's Army (NPA) does not bind or tie the hands of the Court in determining the real killer as borne by the evidence.

Di tulad ng mga mahistrado sa apelasyon na tumutunghay at nananalig lamang sa mga record at stenographic notes, ang hukom sa paglilitis ay nasa mas mainam na posisyon upang timbangin ang mga salaysay ng mga testigo.

Ang pag-amin ng NPA sa pagpatay ng biktima ay hindi makapagtatali sa hukuman upang alamin ang tunay na salarin ayon sa ebidensya.

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) affirming with modification that[2] of the Regional Trial Court (RTC) in Kalibo, Aklan, Branch 8, finding petitioner Ricky Bastian guilty of homicide, instead of murder.

The Facts

On April 24, 1995, at around 11:00 p.m., Lorna Bandiola went to Solido Elementary School in Nabas, Aklan to fetch her children Lorena and Lorsen who were attending a dance party.[3] On her way inside the campus, she saw petitioner Ricky Bastian, together with co-accused Albino Layasan, Roque Prado and Renato Prado. The trio were seated on the concrete fence of the school.[4]

Lorna did not mind them as she proceeded to the dance hall.[5] Upon reaching the hall, she learned that the party was still in progress. She decided to while the time and waited for her children. When the affair ended at around 2:00 a.m., Lorna left the school premises with Lorena and Lorsen in tow.

While on their way out of the campus, Lorna saw her son-in-law John Ronquillo, the victim, about ten (10) arms-stretch ahead of them. Apparently, he also went to the dance party and was about to go home.[6] It was at that point when Lorna saw petitioner step ahead of his co-accused. Unexpectedly, petitioner drew a gun and shot Ronquillo on the head. The victim fell instantaneously. Petitioner continued shooting while Ronquillo lay sprawled on the ground.[7]

Lorna heard petitioner's co-accused saying, "He is dead already," before the group ran away.[8] She trembled with

fear and had to be helped by Lorena and Lorsen in going out of the school campus.[9]

After receiving a dispatch report regarding the shooting incident at the school grounds, Police Officers Jose Roño, Elmer Villanueva and Ramie Zomil immediately proceeded to the crime scene. The investigating team arrived at around 2:50 a.m. They found the dead body of John Ronquillo on the ground, face up. When they checked the body, they recovered one (1) bullet slug on the ground, near the back of the victim.

The victim's cadaver was later turned over to the Joy Funeral Parlor in Solido, Nabas, Aklan. There, Dr. Gloria Boliver of the Municipal Health Office conducted a post-mortem autopsy.

On complaint of the heirs of the victim John Ronquillo, petitioner Ricky Bastian and his co-accused Albino Layasan, Roque Prado and Renato Prado, were all indicted for murder in an Information bearing the following accusation:

That on or about the 25th day of April 1995, in the early morning in Barangay Solido, Municipality of Nabas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating together and mutually helping one another, with intent to kill one JOHN RONQUILLO, with treachery and evident premeditation, while armed with a gun, did then and there willfully, unlawfully and feloniously attack, assault and shoot said JOHN RONQUILLO, thereby inflicting upon the latter serious and mortal wounds, to wit:

- Gunshot wound, head, at the fronto-parietal region, 1 inch above the right ear, penetrating the skull and the brain tissue. Wound is round in shape with clean cut edge (wound entrance).
- Gunshot wound, oval in shape, abdomen level of the umbilicus, right side of the lumbar region (entrance).
- Gunshot wound, abdomen, lumbar region, posterior to wound No. 2 with irregular edge (wound exit).
- Gunshot wound, left breast, oval in shape, clean cut edge (entrance).
- Gunshot wound, right chest, irregular edge (exit).
- Wound, left arm posterior, irregular edge.

As per Autopsy Report issued by Dr. Gloria Z. Bolivar, Municipal Health Officer of the Rural Health Unit of Nabas, Aklan, hereto attached and forming an integral part hereof which wounds directly caused the death of said JOHN RONQUILLO.

That as a result of the criminal acts of the above-named accused, the heirs of the deceased JOHN RONQUILLO suffered actual and compensatory damages in the amount of P50,000.00.[10]

Petitioner waived the conduct of a pre-trial conference, hence, trial on the merits ensued.

The prosecution evidence, which was portrayed by the foregoing facts, was principally supplied by Lorna Bandiola, Dr. Gloria Boliver of the Nabas, Aklan Municipal Health Office, and Jose Roño of the local Philippine National Police (PNP) office. Their accounts were corroborated in material points by the victim's spouse Analie Ronquillo and Nemelyn Tulio.

Upon the other hand, the defense version founded on denial, was summarized by the appellate court in the following tenor:

The defense, on the other hand, presented seven (7) witnesses including accused-appellant, who denied killing J. RONQUILLO and interposed the defense of alibi. He claimed that in the evening of April 24, 1995, he was in the house of Barangay Captain VOLTAIRE GARCIA, drinking liquor with the latter and ALBINO LAYASAN until 12:30 a.m. They were very drunk and were unable to go home. He went to bed ahead of the

others, while GARCIA and LAYASAN were still conversing (Id. at 9). He woke up at 8 a.m. and learned later at 2 p.m. of the following day that JOHN was shot. He did not attend the dance party because he was heavily drunk (TSN, April 4, 2000, pp. 4-6). His testimony was corroborated by VOLTAIRE GARCIA.[11]

RTC and CA Dispositions

On March 20, 2001, the trial court convicted petitioner of homicide instead of murder. In the same breath, the RTC acquitted Layasan and Roque and Renato Prado of the charge due to insufficient evidence. The fallo of the trial court judgment reads:

WHEREFORE, premises considered, considering the presence of the aggravating circumstance of nighttime and applying the Indeterminate Sentence Law, accused Ricky Bastian is sentenced to suffer the penalty of imprisonment ranging from TWELVE (12) years of prision mayor in its maximum period as minimum penalty to SEVENTEEN (17) years, FOUR (4) months and ONE (1) day of reclusion temporal in its medium period as maximum penalty and to indemnify the heirs of John Ronquillo the sum of P50,000.00 for the death of the victim and another sum of P200,000.00 for loss of earning capacity, and another sum of P10,000.00 as reimbursement of burial expenses, and another sum of P50,000.00 for moral damages.

For lack of sufficient evidence, accused Albino Layasan, Roque Prado and Renato Prado are hereby ACQUITTED. No pronouncement as to cost.

SO ORDERED.[12]

Still dissatisfied, petitioner elevated the matter to the CA. The appeal was anchored on the lone ground that his guilt was not proven beyond reasonable doubt. On August 29, 2003, the CA Fifteenth Division affirmed the trial court disposition with modification as to the damages awarded. The dispositive part of the CA decision reads:

WHEREFORE, premises considered, the decision of the Regional Trial Court, Branch 8 of Kalibo, Aklan, is hereby AFFIRMED with modification. Applying the Indeterminate Sentence Law and absent any modifying circumstance, the accused-appellant (petitioner) is hereby sentenced to an indeterminate penalty ranging from ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. He is further ordered to indemnify the heirs of the victim the amount of P1,800 for burial expenses, P141,320 for lost earnings of the deceased, P50,000 for death indemnity, and another P50,000 for moral damages (People v. Morano, G.R. No. 129235, Nov. 18, 2002).

SO ORDERED.[13]

In reducing the award of damages, the CA opined:

As to the amount of damages awarded, except for the P1,800 burial fee receipt (Exhibit "G," p. 213, Records) issued by the Nabas Parish Church, no other official receipts were adduced to prove the actual damages incurred for the burial expenses. Offered as proof of the expenditures were the certifications issued by the alleged owners of the funeral parlor and the band. But a certification, by its nature, is easy to fabricate and as such cannot be admitted in lieu of official receipts. Hence, the reduction of the burial expense from P10,000 to P1,800. The well-settled rule is that actual damages cannot be awarded based on the allegation of a witness without any competent document to support such claim - proof is required to be adequately supported by receipts (People v. Enguito, 326 SCRA 508 [2000]).

Even if the prosecution did not present documentary evidence to support the claim for loss of earning capacity, testimonial evidence may be sufficient to establish a basis for which the court can make a fair and reasonable estimate of damages for loss of earning capacity (People v. Perreras, 362 SCRA 202 [2001]). In People v. Muyco (331 SCRA 192 [2000]), the Supreme Court held:

To be able to claim damages for loss of earning capacity despite the non-availability of documentary evidence, there must be oral testimony that: (a) the victim was self-employed earning less than the minimum wage under the current labor laws and judicial notice was taken of the fact that in the victim's line of work, no documentary evidence is available; (b) the victim was employed as a daily wage worker earning less than the minimum wage under current labor laws. x x x

Thus, his heirs are entitled to receive an award for lost earnings in accordance with the following formula: $\frac{2}{3} (80 - \text{ATD [age at the time of death]}) \times (\text{GAI [gross annual income]}) - 80\% \text{ GAI}$.

In the case at bench, no documentary evidence regarding the net income of the victim was offered that would serve as the basis for the computation of his net income. But the wife, however, testified that her husband used to earn 50 cavans of rice every year as a farmer. In their line of employment, no available documentary evidence could be considered to determine their net income. More so, this was not disputed by the defense. Thus, following the above formula -

$$= \frac{2}{3} (80 - 27 \text{ years old}) \times (50 \text{ cavans} \times \text{P}400) - 80\% (50 \text{ cavans} \times \text{P}400)$$

$$= \frac{2}{3} (53) \times (\text{P}20,000) - 80\% (\text{P}20,000)$$

$$= 35.33 \times (\text{P}20,000) - (\text{P}16,000)$$

$$= \text{P}141,320$$

the heirs of JOHN RONQUILLO are entitled to receive P141,320 as an award for lost earnings.[14]

Issues

Undaunted, petitioner has resorted to the present recourse, imputing to the CA triple errors, viz.:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED WITH MODIFICATION, THE DECISION OF THE COURT A QUO DESPITE THE FACT THAT THE EVIDENCED (SIC) PRESENTED BY THE PROSECUTION WERE MERELY BASED ON CIRCUMSTANTIAL EVIDENCE THAT WERE TAINTED WITH INCONSISTENCIES, ASIDE FROM THE FACT THAT THE NPA PUBLICLY CLAIMS RESPONSIBILITY FOR THE KILLING OF JOHN RONQUILLO, AFTER FINDING HIM GUILTY OF MURDER AND RAPE;

II.

THAT THE POLICE AUTHORITIES OF NABAS, AKLAN, FAILED AS IT FAILED TO IDENTIFY THE ASSAILANT OF JOHN RONQUILLO, AND, IN FACT, HAS NOT INITIATED THE FILING OF FORMAL COMPLAINT BEFORE THE PROVINCIAL PROSECUTOR, AKLAN, AS THERE ARE NO WITNESSES PRESENTED BY THE FAMILY OF THE VICTIM UP TO JUNE 20, 1995, FROM APRIL 25, 1995, THE DATE THE INCIDENT OCCURRED;

III.

THE FACT THAT THE NPA HAS CLAIMED RESPONSIBILITY FOR THE KILLING OF JOHN RONQUILLO, THE HONORABLE COURT MUST THEREFORE, REVERSE (SIC) AND SET ASIDE THE DECISION OF THE COURT A QUO AND THAT OF THE HON. COURT OF APPEALS AND INSTEAD ACQUIT THE HEREIN ACCUSED-PETITIONER ON GROUND OF MISTAKEN IDENTITY AND TO REMAND THE CASE TO THE LOWER COURT FOR FURTHER PROCEEDINGS.[15]
(Underscoring supplied)

Our Ruling

The matter of determining credibility of witnesses is best left to the trial and appellate courts. The NPA bare claim for the killing does not bind the Court.

Petitioner scores both the RTC and the CA for accepting hook, line and sinker the prosecution version of the incident. According to petitioner, the accounts given by the prosecution witnesses are highly-incredible and unworthy of credence and belief. It is also contended that the New People's Army (NPA) has claimed responsibility for the killing of John Ronquillo. The armed guerrilla group allegedly executed Ronquillo after they found him liable for murder and rape.

Verily, the thrust of this appeal is to assail the credibility of the witnesses for the People. Upon a review of the entire records, the Court finds no cogent reason to depart from the findings and conclusions reached by the trial court and the CA. More specifically, this Court puts great weight on the factual findings of the trial judge who conducted the trial of the case and heard the testimonies of the witnesses themselves.[16] In *People v. Sanchez*,[17] the Court had occasion to reiterate that:

The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch - these can reveal if the witness is telling the truth or lying in his teeth.[18]

That the New Peoples' Army allegedly publicly claimed responsibility for the killing of the victim is beside the point. It is not binding on the Court. It does not preclude the Court from determining the real killer in accordance with the rule of evidence and settled jurisprudence.

Former Chief Justice Hilario Davide's explanation in *People v. Quijada*[19] is likewise illuminating:

Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect. For, the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[20]

Compared to appellate magistrates who merely deal and contend with the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them, the trial judge confronts the victim or his heirs, the accused and their respective witnesses. He personally observes their conduct, demeanor and deportment while responding to the questions propounded by both the prosecutor and defense counsel. Moreover, it is also the trial judge who has the opportunity to pose clarificatory questions to the parties. Tersely put, when a trial judge makes his findings as to the issue of credibility, such findings bear great weight, at times even finality, on the appellate court.[21]

The RTC and the CA found the testimonies of the witnesses for the People to have met and passed the tests of credibility and believability.

Elementary is the rule that when the findings of the trial court have been affirmed by the appellate court, the said findings are generally binding upon this Court.[22]

Petitioner's conviction is based
on both positive testimony of an eye-

witness and circumstantial evidence.

Petitioner insists that both the trial court and the CA erred in convicting him of the crime charged on circumstantial evidence. According to petitioner, the inference upon which the conviction was premised was not proved beyond reasonable doubt.

The argument is misleading. It bears stressing that the trial court convicted petitioner of homicide mainly on the strength of the testimonies of prosecution witnesses Lorna Bandiola and Nemelyn Tulio. Bandiola was an eyewitness to the commission of the crime while Tulio provided circumstantial evidence pointing to petitioner as the author of the gruesome killing of the victim Ronquillo.

Circumstantial evidence is defined as that evidence that "indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established." Resort to it is essential when the lack of direct testimony would result in setting a felon free.[23]

At the outset, We may well emphasize that direct evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction.[24] Verily, resort to circumstantial evidence is sanctioned by Rule 133, Section 5 of the Revised Rules on Evidence.[25]

The following are the requisites for circumstantial evidence to be sufficient to support conviction: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.[26]

The trial court pointed to the following circumstantial evidence that sufficiently identified petitioner as the author of the gruesome killing:

There were a number of proven circumstances from which an inference could be made that Ricky Bastian was the assailant. Circumstance No. 1: The fact that Nemelyn heard gunshots and saw gun-flashes twenty (20) meters away while she was on her way out of the school campus approaching the main gate; Circumstance No. 2: The fact that after she heard gunshots, a short while thereafter, she saw Ricky Bastian holding a gun running past behind her five (5) meters away coming from the direction where the shots came from; and Circumstance No. 3: The fact that when she lighted with her flashlights the place where she heard gunshots, she saw the victim lying dead on the ground.

These are a combination of unbroken chain of circumstances consistent with the hypothesis that Ricky Bastian was the assailant and inconsistent with the hypothesis that he was not. Otherwise stated, these unbroken chain of circumstances taken collectively engendered moral certainty for the Court to believe that Ricky Bastian was the assailant. Nemelyn's opportunity, however, of identifying Ricky Bastian as the assailant was put to question by the accused through their witnesses. We will put to rest this question in the discussion that follow, but first, let us take a look on the eyewitness account of Lorna Bandiola because her credibility and her presence as an eyewitness are likewise being questioned by the defense.[27]

Even assuming, *ex gratia argumenti*, that the testimony of Nemelyn Tulio can be discarded, petitioner's conviction founded on the positive declarations of eyewitness Lorna Bandiola still stands on terra firma. The rule is well-entrenched in this jurisdiction that in determining the value and credibility of evidence, witnesses are to be weighed, not numbered. The testimony of only one witness, if credible and positive, is sufficient to convict.[28] *People v. Ramos*,[29] quoting *People v. Toyco*,[30] is good authority with the following pronouncement:

It is axiomatic that truth is established not by the number of witnesses but by the quality of their testimonies. The testimony of a single witness if positive and credible is sufficient to support a conviction even in a charge of murder.[31]

On the penalty and civil liability

Article 249 of the Revised Penal Code defines and penalizes homicide in the following tenor:

Art. 249. Homicide. - Any person who, not falling within the provisions of Article 246 (Parricide), shall kill another without the attendance of any of the circumstances enumerated in the next preceding article (Murder), shall be deemed guilty of homicide and be punished by reclusion temporal.

The penalty for homicide is reclusion temporal in any of its periods. It ranges from twelve (12) years and one (1) day to twenty (20) years. The trial court appreciated the aggravating circumstance of nighttime. Upon review by the CA, the appellate court opined that while the crime was committed at around 2:00 a.m., the cover of darkness was not relevant to its commission. We sustain the CA conclusion that nighttime does not aggravate the killing of Ronquillo. Thus, the proper penalty or maximum term of the indeterminate sentence could be reclusion temporal medium (fourteen [14] years, eight [8] months and one [1] day to seventeen [17] years and four [4] months).

Under the Indeterminate Sentence Law, the minimum term must be taken from the penalty next lower in degree, which is prision mayor, ranging from six (6) years and one (1) day to twelve (12) years, to be imposed in any of its periods. Of course, a better calibration is to likewise set the minimum term in the medium period (eight [8] years and one [1] day to ten [10] years).

The CA award of burial expenses in the amount of P1,800.00 and P141,320.00 for lost earnings is duly covered by receipts and testimony of the victim's spouse, respectively. It should be maintained. The award of P50,000.00 for civil indemnity and another P50,000.00 for moral damages is likewise in accord with latest jurisprudence.[32]

In fine, both the penalty and the civil liability imposed on the petitioner by the Court of Appeals are in order.

WHEREFORE, the appealed decision is AFFIRMED in full.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Rollo, pp. 29-36. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Sergio L. Pestaño (now deceased) and Rosalinda Asuncion-Vicente, concurring.

[2] Id. at 65-94. In Criminal Case No. 4583, entitled "People of the Philippines v. Ricky Bastian, et al."

[3] TSN, May 14, 1998, p. 3.

[4] Id. at 4.

[5] Id.

[6] Id. at 5.

[7] Id. at 6.

[8] Id. at 7.

[9] Id. at 9.

[10] Rollo, pp. 169-170.

[11] Id. at 31-32.

[12] Id. at 94.

[13] Id. at 36.

[14] Id. at 35-36.

[15] Id. at 13.

[16] *People v. Rivera*, 433 Phil. 343 (2002); *People v. Librando*, 390 Phil. 543 (2000); *People v. Deleverio*, G.R. Nos. 118937-38, April 24, 1998, 289 SCRA 547; *People v. Zaballero*, G.R. No. 100935, June 30, 1997, 274 SCRA 627.

[17] G.R. Nos. 121039-45, January 25, 1999, 302 SCRA 21.

[18] *People v. Sanchez*, id. at 45.

[19] G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191.

[20] *People v. Quijada*, id. at 212-213.

[21] *People v. Rayles*, G.R. No. 169874, July 27, 2007, 528 SCRA 409; *People v. Lua*, G.R. Nos. 114224-25, April 26, 1996 256 SCRA 539, 546.

[22] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642.

[23] *People v. Matito*, G.R. No. 144405, February 24, 2004, 423 SCRA 617.

[24] *People v. Casitas*, G.R. No. 137404, February 14, 2003, 397 SCRA 382.

[25] Revised Rules on Evidence, Rule 133, Sec. 5 reads:

Sec. 5. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce conviction beyond a reasonable doubt.

[26] *People v. Casitas*, *supra*.

[27] Rollo, p. 86.

[28] *People v. Benito*, G.R. No. 128072, February 19, 1999, 303 SCRA 468; *People v. Canada*, G.R. No. L-63728, September 15, 1986, 144 SCRA 121; *People v. Lucas*, G.R. No. L-60744, November 25, 1983, 125 SCRA 813; *People v. Demeterio*, G.R. No. L-48255, September 30, 1983, 124 SCRA 914; *People v. Romero*, G.R. No. L-38786, December 15, 1982, 119 SCRA 234; *People v. Zabala*, 86 Phil. 251 (1950).

[29] G.R. No. 135204, April 14, 2004, 427 SCRA 299.

[30] G.R. No. 138609, January 17, 2001, 349 SCRA 385, 399.

[31] *People v. Ramos*, *supra* at 308.

[32] *People v. Barcelon*, G.R. No. 144308, September 24, 2002, 389 SCRA 556; *People v. Cabacan*, G.R. No.

130965, August 22, 2002, 387 SCRA 582; Angcaco v. People, G.R. No. 146664, February 28, 2002, 378 SCRA 297.

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