

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO SALAFRANCA Y BELLO, ACCUSED-APPELLANT.

G.R. No. 173476. February 22, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

An ante-mortem declaration of a victim of murder, homicide, or parricide that meets the conditions of admissibility under the Rules of Court and pertinent jurisprudence is admissible either as a dying declaration or as a part of the *res gestae*, or both.

Rodrigo Salafranca y Bello was charged with and tried for murder for the fatal stabbing of Johnny Bolanon, and was ultimately found guilty of the felony by the Regional Trial Court, Branch 18, in Manila on September 23, 2004. On appeal, his conviction was affirmed by the Court of Appeals (CA) through its decision promulgated on November 24, 2005.[1]

Salafranca has come to the Court on a final appeal, continuing to challenge the credibility of the witnesses who had incriminated him.

The established facts show that past midnight on July 31, 1993 Bolanon was stabbed near the Del Pan Sports Complex in Binondo, Manila; that after stabbing Bolanon, his assailant ran away; that Bolanon was still able to walk to the house of his uncle Rodolfo B. Estaño in order to seek help; that his uncle rushed him to the Philippine General Hospital by taxicab; that on their way to the hospital Bolanon told Estaño that it was Salafranca who had stabbed him; that Bolanon eventually succumbed at the hospital at 2:30 am despite receiving medical attention; and that the stabbing of Bolanon was personally witnessed by Augusto Mendoza, then still a minor of 13 years, who was in the complex at the time.[2]

As stated, Salafranca fled after stabbing Bolanon. He evaded arrest for a long period, despite the warrant for his arrest being issued. He was finally arrested on April 23, 2003, and detained at the Manila City Jail.

After trial, the RTC convicted Salafranca, stating:

The evidence is clear that it was Rodrigo Salafranca who delivered two (2) stabbing blows to the victim while holding Johnny Bolanon with his left arm encircled around Bolanon's neck stabbing the latter with the use of his right hand at the right sub costal area which caused Bolanon's death. Not only because it was testified to by Augusto Mendoza but corroborated by Rodolfo Estaño, the victim's uncle who brought Bolanon to the hospital and who relayed to the court that when he aided Bolanon and even on their way to the hospital while the latter was suffering from hard breathing, victim Bolanon was able to say that it was Rodrigo Salafranca who stabbed him.[3]

The RTC appreciated treachery based on the testimony of Prosecution witness Mendoza on how Salafranca had effected his attack against Bolanon, observing that by "encircling his (accused) left arm, while behind the victim on the latter's neck and stabbing the victim with the use of his right hand," Salafranca did not give Bolanon "any

opportunity to defend himself.”[4] The RTC noted inconsistencies in Salafranca’s and his witness’ testimonies, as well as the fact that he had fled from his residence the day after the incident and had stayed away in Bataan for eight years until his arrest. The RTC opined that had he not been hiding, there would be no reason for him to immediately leave his residence, especially because he was also working near the area.[5]

The RTC disposed thus:

With the above observations and findings, accused Rodrigo Salafranca is hereby found guilty of the crime of Murder defined and punished under Article 248 as amended by Republic Act No. 7659 in relation to Article 63 of the Revised Penal Code with the presence of the qualifying aggravating circumstance of treachery (248 par. 1 as amended) without any mitigating nor other aggravating circumstance attendant to its commission, Rodrigo Salafranca is hereby sentenced to suffer the penalty of reclusion perpetua.

He shall be credited with the full extent of his preventive imprisonment under Article 29 of the Revised Penal Code.

His body is hereby committed to the custody of the Director of the Bureau of Correction, National Penitentiary, Muntinlupa City thru the City Jail Warden of Manila.

He is hereby ordered to indemnify the heirs of the victim the sum of P50,000.00 representing death indemnity.

There being no claim of other damages, no pronouncement is hereby made.

SO ORDERED.[6]

On appeal, the CA affirmed the findings and conclusions of the RTC,[7] citing the dying declaration made to his uncle pointing to Salafranca as his assailant,[8] and Salafranca’s positive identification as the culprit by Mendoza.[9] It stressed that Salafranca’s denial and his alibi of being in his home during the incident did not overcome the positive identification, especially as his unexplained flight after the stabbing, leaving his home and employment, constituted a circumstance highly indicative of his guilt.[10]

Presently, Salafranca reiterates his defenses, and insists that the State did not prove his guilt beyond reasonable doubt.

The appeal lacks merit.

Discrediting Mendoza and Estaño as witnesses against Salafranca would be unwarranted. The RTC and the CA correctly concluded that Mendoza and Estaño were credible and reliable. The determination of the competence and credibility of witnesses at trial rested primarily with the RTC as the trial court due to its unique and unequalled position of observing their deportment during testimony, and of assessing their credibility and appreciating their truthfulness, honesty and candor. Absent a substantial reason to justify the reversal of the assessment made and conclusions reached by the RTC, the CA as the reviewing court was bound by such assessment and conclusions,[11] considering that the CA as the appellate court could neither substitute its assessment nor draw different conclusions without a persuasive showing that the RTC misappreciated the circumstances or omitted significant evidentiary matters that would alter the result.[12] Salafranca did not persuasively show a misappreciation or omission by the RTC. Hence, the Court, in this appeal, is in no position to undo or to contradict the findings of the RTC and the CA, which were entitled to great weight and respect.[13]

Salafranca’s denial and alibi were worthless in the face of his positive identification by Mendoza as the assailant of Bolanon. The lower courts properly accorded full faith to such incrimination by Mendoza considering that Salafranca did not even project any ill motive that could have impelled Mendoza to testify against him unless it was upon the truth.[14]

Based on Mendoza's account, Salafranca had attacked Bolanon from behind and had "encircled his left arm over the neck (of Bolanon) and delivered the stabbing blow using the right(hand) and coming from wntt (sic) up right sideways and another one encircling the blow towards below the left nipple." [15] Relying on Mendoza's recollection of how Salafranca had attacked Bolanon, the RTC found treachery to be attendant in the killing. This finding the CA concurred with. We join the CA's concurrence because Mendoza's eyewitness account of the manner of attack remained uncontested by Salafranca who merely insisted on his alibi. The method and means Salafranca employed constituted a surprise deadly attack against Bolanon from behind and included an aggressive physical control of the latter's movements that ensured the success of the attack without any retaliation or defense on the part of Bolanon. According to the Revised Penal Code, [16] 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.

The Court further notes Estaño's testimony on the utterance by Bolanon of statements identifying Salafranca as his assailant right after the stabbing incident. The testimony follows:

Q

Can you tell what happened on the said date?

A

My nephew arrived in our house with a stab wound on his left chest.

Q

What time was that?

A

12:50 a.m.

Q

When you saw your nephew with a stab wound, what did he say?

A

"Tito dalhin mo ako sa Hospital sinaksak ako."

Q

What did you do?

A

I immediately dressed up and brought him to PGH.

Q

On the way to the PGH what transpired?

A

While traveling toward PGH I asked my nephew who stabbed him?, and he answered, Rod Salafranca.

Q

Do you know this Rod Salafranca?

A

Yes, Sir.

Q

How long have you known him?

A

“Matagal na ho kasi mag-neighbor kami.”

Q

If you see him inside the courtroom will you be able to identify him?

A

Yes, Sir.

Q

Will you look around and point him to us?

A

(Witness pointing to a man who answered by the name of Rod Salafranca.)

COURT

When he told you the name of his assailant what was his condition?

A

He was suffering from hard breathing so I told him not to talk anymore because he will just suffer more.

Q

What happened when you told him that?

A

He kept silent.

Q

What time did you arrive at the PGH?

A

I cannot remember the time because I was already confused at that time.

Q

When you arrived at the PGH what happened?

A

He was brought to Emergency Room.

Q

When he was brought to the emergency room what happened?

A

He was pronounced dead.[17]

It appears from the foregoing testimony that Bolanon had gone to the residence of Estaño, his uncle, to seek help right after being stabbed by Salafranca; that Estaño had hurriedly dressed up to bring his nephew to the Philippine General Hospital by taxicab; that on the way to the hospital, Estaño had asked Bolanon who had stabbed him, and the latter had told Estaño that his assailant had been Salafranca; that at the time of the utterance Bolanon had seemed to be having a hard time breathing, causing Estaño to advise him not to talk anymore; and that about ten minutes after his admission at the emergency ward of the hospital, Bolanon had expired and had been pronounced dead. Such circumstances qualified the utterance of Bolanon as both a dying declaration and as part of the res gestae, considering that the Court has recognized that the statement of the victim an hour before his death and right after the hacking incident bore all the earmarks either of a dying declaration or part of the res gestae either of which was an exception to the hearsay rule.[18]

A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when the following requisites concur, namely: (a) that the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time the declaration is made, the declarant is under a consciousness of an impending death; (c) that the declarant is competent as a witness; and (d) that the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.[19]

All the requisites were met herein. Bolanon communicated his ante-mortem statement to Estaño, identifying Salafranca as the person who had stabbed him. At the time of his statement, Bolanon was conscious of his impending death, having sustained a stab wound in the chest and, according to Estaño, was then experiencing great difficulty in breathing. Bolanon succumbed in the hospital emergency room a few minutes from admission, which occurred under three hours after the stabbing. There is ample authority for the view that the declarant's belief in the imminence of his death can be shown by the declarant's own statements or from circumstantial evidence, such as the nature of his wounds, statements made in his presence, or by the opinion of his physician.[20] Bolanon would have been competent to testify on the subject of the declaration had he survived. Lastly, the dying declaration was offered in this criminal prosecution for murder in which Bolanon was the victim.

A declaration or an utterance is deemed as part of the res gestae and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (a) the principal act, the res gestae, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances.[21]

The requisites for admissibility of a declaration as part of the res gestae concur herein. Surely, when he gave the identity of the assailant to Estaño, Bolanon was referring to a startling occurrence, i.e., his stabbing by Salafranca. Bolanon was then on board the taxicab that would bring him to the hospital, and thus had no time to contrive his identification of Salafranca as the assailant. His utterance about Salafranca having stabbed him was made in spontaneity and only in reaction to the startling occurrence. The statement was relevant because it identified Salafranca as the perpetrator.

The term res gestae has been defined as "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." [22] In a general way, res gestae refers to the

circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication.[23] The rule on *res gestae* encompasses the exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.[24] The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.[25]

We modify the limiting of civil damages by the CA and the RTC to only the death indemnity of P50,000.00. We declare that the surviving heirs of Bolanon were entitled by law to more than such indemnity, because the damages to be awarded when death occurs due to a crime may include: (a) civil indemnity *ex delicto* for the death of the victim (which was granted herein); (b) actual or compensatory damages; (c) moral damages; (d) exemplary damages; and (e) temperate damages.[26]

We hold that the CA and the RTC should have further granted moral damages which were different from the death indemnity.[27] The death indemnity compensated the loss of life due to crime, but appropriate and reasonable moral damages would justly assuage the mental anguish and emotional sufferings of the surviving family of the victim.[28] Although mental anguish and emotional sufferings of the surviving heirs were not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore the heirs of Bolanon to their moral status quo ante. Given the circumstances, the amount of P50,000.00 is reasonable as moral damages, which, pursuant to prevailing jurisprudence,[29] we are bound to award despite the absence of any allegation and proof of the heirs' mental anguish and emotional suffering. The rationale for doing so rested on human nature and experience having shown that:

xxx a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.[30]

The CA and the RTC committed another omission consisting in their non-recognition of the right of the heirs of Bolanon to temperate damages. It is already settled that when actual damages for burial and related expenses are not substantiated by receipts, temperate damages of at least P25,000.00 are warranted, for it would certainly be unfair to the surviving heirs of the victim to deny them compensation by way of actual damages.[31]

Moreover, the Civil Code provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." [32] The Civil Code permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." [33] Conformably with such legal provisions, the CA and the RTC should have recognized the entitlement of the heirs of the victim to exemplary damages because of the attendance of treachery. It was of no moment that treachery was an attendant circumstance in murder, and, as such, inseparable and absorbed in murder. The Court explained so in *People v. Catubig*: [34]

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each

of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

For the purpose of fixing the exemplary damages, the sum of P30,000.00 is deemed reasonable and proper,[35] because we think that a lesser amount could not result in genuine exemplarity.

WHEREFORE, the Court AFFIRMS the decision of the Court of Appeals promulgated on November 24, 2005, but MODIFIES the awards of civil damages by adding to the amount of P50,000.00 awarded as death indemnity the amounts of P50,000.00 as moral damages; P25,000.00 as temperate damages; and P30,000.00 as exemplary damages, all of which awards shall bear interest of 6% per annum from the finality of this decision.

The accused shall further pay the costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Villarama, Jr., and [*]Perlas-Bernabe, JJ., concur.

[*] Vice Associate Justice Mariano C. Del Castillo, who is on sick leave, per Special Order No. 1203 dated February 17, 2012.

[1] Rollo, pp. 2-11; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, now retired), with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente Q. Roxas, concurring.

[2] Id., pp. 3-4.

[3] CA rollo, p. 36.

[4] Id., p. 38.

[5] Id., pp. 36-38.

[6] Id., p. 39.

[7] Supra, at note 1.

[8] Id. at p. 6.

[9] Id. at p. 9.

[10] CA rollo, p. 110.

[11] *People v. Resuma*, G.R. No. 179189, February 26, 2008, 546 SCRA 728, 737.

[12] *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489, 496.

[13] *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 219; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 153-154; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343, 349; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164, 174; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 265-266; *People v. Santiago*, G.R. No. 137542-43, January 20, 2004, 420 SCRA 248, 256.

[14] *Domingo v. People*, G.R. No. 186101, October 12, 2009, 603 SCRA 488, 508.

[15] TSN, September 1, 2003, pp. 3-4.

[16] Article 14, paragraph 16, Revised Penal Code.

[17] TSN, March 18, 2003, pp. 3-4.

[18] *People v. Loste*, G.R. No. 94785, July 1, 1992, 210 SCRA 614, 621, citing *People v. Mision*, G.R. No. 63480, February 26, 1991, 194 SCRA 432, 339-340.

[19] *People v. Labagala*, G.R. No. 184603, August 2, 2010, 626 SCRA 267, 278; see also *People v. Garma*, G.R. No. 110872, April 18, 1997, 271 SCRA 517, 522; *People v. Elizaga*, No. L-78794, November 21, 1988, 167 SCRA 516, 520; *People v. Lanza*, No. L-31782, December 14, 1979, 94 SCRA 613, 625; *People v. Saliling*, No. L-27874, February 27, 1976, 69 SCRA 427, 438.

[20] M. Graham, *Federal Practice and Procedure: Evidence* § 7074, Interim Edition, Vol. 30B, 2000, West Group, St. Paul, Minnesota; citing *Shepard v. United States*, 290 US 96, 100; *Mattox v. United States*, 146 US 140, 151 (sense of impending death may be made to appear “from the nature and extent of the wounds inflicted, being obviously such that he must have felt or known that he could not survive.”); *Webb v. Lane*, 922 F.2d 390, 395-396 (7th Cir. 1991); *United States v. Mobley*, 491 F.2d 345 (5th Cir. 1970).

[21] *People v. Peralta*, G.R. No. 94570, September 28, 1994, 237 SCRA 218, 224; *People v. Maguikay*, G.R. No. 103226-28, October 14, 1994, 237 SCRA 587, 600.

[22] *Alhambra Bldg. & Loan Ass’n v. DeCelle*, 118 P. 2d 19, 47 C.A. 2d 409; *Reilly Tar & Chemical Corp. v. Lewis*, 61 N.E. 2d 297, 326 Ill. App. 117.

[23] *Kaiko v. Dolinger*, 440 A. 2d 198, 184 Conn. 509; *Southern Surety Co. v. Weaver*, Com. App. 273 S.W. 838.

[24] *People v. Sanchez*, G.R. No. 74740, August 28, 1992, 213 SCRA 70, 79.

[25] *Molloy v. Chicago Rapid Transit Co.*, 166 N.E. 530, 335 Ill. 164; *Campbell v. Gladden*, 118 A. 2d 133, 383 Pa. 144, 53 A.L.R. 2d 1222.

[26] *People v. Fontanilla*, G.R. No. 177743, January 25, 2012; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 455.

[27] *Heirs of Raymundo Castro v. Bustos*, L-25913, February 28, 1969, 27 SCRA 327, 333.

[28] Article 2206, (3), in relation to Article 2217 and Article 2219, Civil Code, and Article 107, Revised Penal Code.

[29] *People v. Salva*, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 69; *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Berondo, Jr.*, G.R. No. 177827, March 30, 2009, 582 SCRA 547.

[30] *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[31] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804-805.

[32] Article 2230, Civil Code.

[33] Article 2229, Civil Code.

[34] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

[35] See *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 752, *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 637-638.

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