

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. WARREN DELA CRUZ Y FRANCISCO, RESPONDENT.

G.R. No. 174371. December 11, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

THE Holy Book tells the story of Cain treacherously slaying his brother Abel. Then God asked Cain: "Where is your brother Abel?" Cain replied, "I do not know. Am I my brother's keeper?" [1] The story ended with God punishing and banishing Cain.

Though not involving brothers, the case before Us is similar to the Bible story because it involves treachery. And like Cain, appellant anchors his defense on bare denial despite the overwhelming evidence against him. As punishment, We affirm appellant's conviction for murder and his sentence of reclusion perpetua.

Appellant Warren dela Cruz y Francisco appeals the Decision [2] of the Court of Appeals (CA) affirming with modification that of the Regional Trial Court (RTC) in Malabon City [3] convicting him of two (2) counts of murder for the deaths of Danilo Valeriano and Felix Valeriano.

The Facts

On May 9, 1999, at around 2:45 p.m., Leonardo Cayetano, Danilo Valeriano and Felix Valeriano were on their way to the cockpit arena in Dampalit, Malabon. Leonardo was walking ahead of Danilo and Felix at the rice paddies at a distance of four (4) arms length away.

All of a sudden, Leonardo heard a couple of gunshots. Turning his back, he saw Danilo and Felix already sprawled and bloodied on the ground. Despite this, three (3) persons continued shooting them. [4] He recognized the person firing a .38 caliber as appellant Warren dela Cruz. [5]

Fearing for his life, Leonardo ran as fast as he could to an old storehouse. When the assailants left the crime scene, Leonardo ran towards the victims to help them, but they were already dead. [6]

The autopsy conducted by Dr. Manuel Lagonera revealed that Danilo and Felix died of multiple gunshot wounds. Felix sustained two (2) gunshot wounds in the body and one (1) in his head. Danilo had a gunshot wound in the left temporal region of his head. [7] Dr. Lagonera opined that the fatal wounds were fired at close range. [8]

On July 9, 1999, appellant and two (2) John Does were indicted for two (2) counts of murder, in two (2) Informations reading:

Criminal Case No. 21265-MN

The undersigned Asst. City Prosecutor accuses all the above-named accused of the crime of Murder, committed as follows:

That on or about the 9[th] day of May 1999 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and

mutually helping one another, armed with guns, with intent to kill, treachery and evident premeditation, and with abuse of superior strength did, then and there, willfully, unlawfully and feloniously attack, assault and shoot one DANILO L. VALERIANO, hitting him on his head, which caused his immediate death.

CONTRARY TO LAW.[9]

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CONTRARY TO LAW.[10]

On November 11, 2001, appellant was arrested by virtue of a warrant of arrest.[11]The other suspects remained at large.On arraignment, appellant, assisted by counsel de oficio, pleaded not guilty to both Informations.[12]Trial on the merits thereafter ensued.[13]

Prosecution witness Leonardo Cayetano testified that he saw appellant and the other two suspects shoot the victims.Witness Dr. Lagonera testified on the cause of death of the victims.

Appellant invoked the defense of denial.He testified that on May 9, 1999, at around 2:45 p.m., he was walking along the rice paddies on his way tothecockpitinDampalit, Malabon.He was 5 meters behind Felix and Danilo. While walking, a banca stopped in front of him and three (3) persons wearing black bonnets alighted.Upon seeing them, appellant stopped walking but one of them held him by the nape.He was ordered to stoop down.He immediately obliged for fear that he might be hurt.

With a gun pointed at his head, appellant was commanded not to shout and say anything.Then he heard around six (6) gun shots.He was told not to look back.He remained stooping in the ground for about fifteen (15) minutes.

After the assailants left, appellant stood up and saw the victims lying down.He ran towards the cockpit to go to his mother's place in Obando, Bulacan.He told his mother about the killing incidents.He did not report the killings to the authorities because of the threat he received from the assailants.[14]

Appellant's mother, Julieta Francisco, corroborated the testimony of her son.She testified that she was at the house of her in-law in Catanghalan, Obando, Bulacan on May 9, 1999.At around 3:00 p.m., she was surprised to see her son.He was very pale and could not talk properly.Inquiring what was wrong, her son told her that there was a killing incident at the back of the cockpit arena in Dampalit. When asked about the identity of the victim, he replied that it was Danilo. It did not cross her mind to report the incident to the police.[15]

RTC and CA Dispositions

On December 23, 2003, the RTC rendered a joint decision convicting appellant of two (2) counts of murder, with a fallo reading:

WHEREFORE, premises considered, the Court finds accused Warren de la Cruz y Francisco guilty beyond reasonable doubt of the offenses charged and is hereby sentenced to suffer the penalty of reclusion perpetua in each of these cases and to pay each of the heirs of the victims P50,000.00 by way of civil indemnity for the death and P20,000.00 each as actual expenses in the wake and burial of the victims.[16]

The RTC held that the defense of denial cannot prevail over the positive identification of Cayetano that appellant was one of the assailants. No ill motive can be imputed to Cayetano. The flight of appellant also belies his innocence.[17]

The RTC also ruled that the aggravating circumstance of evident premeditation was absent but there was treachery. The means of execution employed by the assailants did not give the victims opportunity to defend themselves or retaliate. It was also deliberately or consciously adopted.[18] There was abuse of superior strength considering the number of armed assailants against the unarmed victims. The element of treachery, however, absorbed abuse of superior strength.[19]

Appellant directly appealed to this Court.[20] In accordance with Our decision in *People v. Mateo*, [21] We referred the case to the CA for proper disposition.

On February 15, 2006, the CA rendered a decision affirming with modification that of the RTC, with a fallo reading:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the assailed Joint Decision of the Regional Trial Court of Malabon City, Branch 170, in Criminal Cases Nos. 21265-MN and 21266-MN is AFFIRMED with MODIFICATION. The accused-appellant Warren de la Cruz y Francisco is convicted of two counts of murder, for the death of Danilo L. Valeriano and Felix Valeriano, Jr., and is sentenced to suffer the penalty of reclusion perpetua in each case. The accused-appellant is likewise ordered to pay the heirs of the victims the amount of P50,000.00 as moral damages, in addition to the amounts of P20,000.00 as actual damages and P50,000.00 as civil indemnity. Costs shall also be assessed against the accused-appellant.

SO ORDERED.[22]

The appellate court held that the testimony of lone eyewitness Cayetano is credible. Like the RTC, the CA held that appellant's bare denial cannot prevail over Cayetano's straightforward and unwaivering identification. Inconsistency in his testimony is only minor and does not affect his credibility.[23] Appellant's flight also evinces a consciousness of guilt and a silent admission of culpability.[24]

The CA agreed with the RTC that treachery was present. The manner of attack employed by appellant and his two (2) companions was deliberate and unexpected. It did not give the victims the opportunity to defend themselves. They were shot from behind.[25]

The CA modified the RTC decision by awarding P50,000 moral damages in addition to the P20,000.00 actual damages and P50,000.00 civil indemnity awarded by the trial court.[26]

Appellant moved for reconsideration but his motion was denied.[27] Undaunted, he resorted to the present recourse.[28]

Issues

Appellant assigns twin errors in the RTC decision -

I

IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT TESTIMONY OF PROSECUTION WITNESS LEONARDO CAYETANO AND IN DISREGARDING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II

IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[29]

In his supplemental brief,[30] appellant claims that if he is guilty, he should only be convicted for homicide.[31]

Our Ruling

The trial court's assessment of credibility of witnesses is given great weight and respect; appellant was identified as one of the perpetrators of the crime. The issues raised by appellant hinge on the credibility of a witness. Appellant argues that the testimony of Cayetano was materially inconsistent. Cayetano initially testified that right after the shooting incident, the police authorities conducted an investigation where he gave his statement to them. However, he contradicted himself when he further testified that he gave his testimony to the police two (2) weeks after the incident.[32]

Appellant also banks on the alleged inconsistencies in the evidence of Cayetano. He asserts that Cayetano testified that he recognized him as one of the assailants but he failed to mention this to the authorities when they took his statement during the investigation.[33] Appellant argues that although his defense is based on mere denial, the prosecution must rely on the strength of its own evidence rather on the weakness of the defense.[34]

It is settled that appellate courts give due respect to the assessment of facts of the trial court. The reason is simple. The trial court had the opportunity of not only receiving evidence but also of observing the witnesses while testifying. The respect accorded to the factual findings of the trial court should be maintained, unless it has overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in a case.[35]

Here, We find no compelling reason to disturb the factual findings of the trial court. The alleged inconsistency in Cayetano's testimony refers only to a minor matter. It is inconsequential and does not impair his credibility.[36] In *People v. Prado*,[37] this Court held:

Inconsistencies and discrepancies on minor details of the testimony of a witness serve instead to strengthen his credibility as they are badges of truth rather than indicia of falsehood. The most candid witnesses oftentimes make mistakes and fall into confused and inconsistent statements but such honest lapses do not necessarily affect their credibility. Far from eroding the effectiveness of the testimonies of the two witnesses, such trivial differences in fact constitute signs of veracity.[38]

We agree with the CA that the alleged inconsistency "only challenges the exact time when Cayetano gave his statement to the police." [39] The fact that Cayetano had conflicting accounts as to when he gave his statement to the police, does not in any way alter his testimony that appellant is one of the malefactors. He witnessed the crimes and had positively identified appellant.

Contrary to his claim, Cayetano specifically identified appellant as one of the assailants in his sworn affidavit before the police authorities. He even declared that he could also identify the other two suspects in case he sees them again.[40] Cayetano confirmed this on the witness stand, thus:

A: I turned my back and I saw my two (2) companions fell down with blood, Sir.

Q: Were those shots successive?

A: Yes, Sir.

Q: When you turned your back you saw the two (2) victims slumped on the ground?

A:

Yes, Sir.

Q: What else did you see aside from the two victims slumped on the ground?

A: I saw the three (3) persons who shot them, Sir.

Q: Those three (3) persons who shot the victims, can you recognize them?

A: I only recognized one [but] I do not know the other two (2), Sir.

Q: You cannot recognize the two (2) persons who shot the victim[s]?

A: Yes, Sir.

Q: You said that you recognized the (sic) one, who is that person whom you recognized?

A: Warren dela Cruz, Sir.

Q: Will you please rise and point at him.

(Witness pointed to a person inside the courtroom who when asked answered to the name Warren dela Cruz.)

Q: You said that you heard shots, did you also recognize the weapon used?

A: Yes, Sir, one (1) .45 and one (1) .38 caliber.

Q: And who was holding the .45 caliber firearm?

A: One of the companions of the accused Warren dela Cruz, Sir.

Q: How about the .38 caliber revolver?

A:

Warren dela Cruz, Sir.[41] (Emphasis supplied)

Cayetano also testified that he had known appellant for a long time as a tricycle driver.[42] Thus, he could not have been mistaken with his identity. Nor is there any evidence that Cayetano was impelled by improper motives in pointing a finger at appellant as one of the culprits. The absence of evidence of improper motive tends to indicate that his testimony is worthy of full faith and credence.[43]

Self-serving denial cannot overthrow the positive identification that appellant was one of the perpetrators of the crime.[44] In *Ferrer v. People*,[45] this Court reiterated the longstanding doctrine that denial -

x x x is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserve more credence and evidentiary weight.[46]

The Court reaffirmed this doctrine in *Velasco v. People*,[47] where it was held that "[t]o be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit."

Appellant even admitted his presence at the scene of the crime when it was committed.[48] He admitted hiding from the clutches of the law for more than a year instead of reporting the matter to the police.[49] His flight is indicative of guilt.[50]

We are not unmindful of the testimony of appellant's mother, Julieta. We, however, give little weight to it because of the positive identification of Cayetano that her son is one of the culprits. More importantly, as a mother, Julieta cannot totally be considered as a disinterested witness. Her maternal instincts may impel her to protect her son at all cost, even to the point of prevarication.

Treachery qualified the killings to murder; treachery absorbs abuse of superior strength. Appellant argues that treachery was not present in the commission of the crime. He claims that the prosecution failed to present any positive proof that he has resolved to commit the crime. There was no proof that the death of the victims was the result of mediation, calculation or reflection.[51]

We hold otherwise. There is treachery when the offender commits the crime employing means, methods or forms of execution thereof which tend directly and specifically to ensure its execution without risk to himself arising from the defense which the victim might make.[52] The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberate or consciously adopted.[53]

Here, Danilo and Felix were shot from behind while they were innocently walking on their way to the cockpit arena in Dampalit, Malabon. They were unaware of the impending death that awaited them. In fact, they were unarmed. They were shot unceremoniously. The absence of warning denied them the opportunity to defend themselves or retaliate. Treachery was clearly present.

Records also show that the malefactors were all armed while Danilo and Felix were not.[54] There was abuse of superior strength.[55] However, as the RTC and CA correctly held, abuse of superior strength is absorbed in treachery. Pursuant to this Court's ruling in *People v. Ellado*,[56] abuse of superior strength can no longer be separately considered as an aggravating circumstance.

There is no violation of appellant's right to information. Appellant also argues that he was denied due process of law. He claims that even if he is found guilty, the qualifying circumstance of treachery, evident premeditation and abuse of superior strength alleged in the two Informations should not be appreciated against him because they were not specified in ordinary and concise language sufficient to enable a person of common understanding to know what those qualifying circumstances were.[57]

Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure provide:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

This Court interpreted the above sections in *People v. Aquino*,[58] as requiring simply that the Information enumerate the attendant circumstances mentioned in the law to qualify the offense. It is sufficient that these circumstances are specified in the Information to apprise the accused of the charge. Said the Court:

The use of the words "aggravating/qualifying circumstances" will not add any essential element to the crime. Neither will the use of such words further apprise the accused of the nature of the charge. The specific allegation of the attendant circumstance in the Information, coupled with the designation of the offense and a statement of the acts constituting the offense as required in Sections 8 and 9 of Rule 110, is sufficient to warn the accused x x x.

x x x x

Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher

category, need not be stated in the language of the law. With more reason, the words "aggravating/qualifying circumstances" as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.

X X X X

Wherefore, we reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.

X X X X

To guide the bench and the bar, this Resolution clarifies and resolves the issue of how to allege or specify qualifying or aggravating circumstances in the Information. The words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated as long as the particular attendant circumstances are specified in the Information. [59] (Citations omitted)

A reading of the allegations in the two Informations [60] against appellant and his co-accused are very clear. These allegations, once proven beyond reasonable doubt, qualify the killing of Danilo and Felix to murder. It would be an unreasonable burden for the prosecution if it is required to do more.

All told, we hold that appellant was properly convicted of murder and sentenced to reclusion perpetua in each case. We, however, find that an award of exemplary damages in the amount of P25,000.00 a piece to the heirs of Danilo and Felix is proper. Exemplary damages are awarded, as here, when treachery attended commission of the crime. [61]

WHEREFORE, the appealed decision of the Court of Appeals is AFFIRMED but MODIFIED in that appellant is also liable to pay the heirs of the victims exemplary damages in the amount of P25,000.00 apiece.

SO ORDERED.

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

[1] Genesis 4:9-10.

[2] Rollo, pp. 3-16. CA-G.R. CR-H.C. No. 01208. Penned by Associate Justice Renato C. Dacudao (retired), and concurred by Associate Justices Regalado E. Maambong, Lucas P. Bersamin (concurring and dissenting), Jose C. Mendoza, and Celia C. Librea-Leagogo.

[3] CA rollo, pp. 12-17. Penned by Judge Benjamin T. Antonio.

[4] TSN, September 13, 2001, pp. 3-4.

[5] Id. at 4.

[6] Id. at 4-5.

- [7] TSN, April 2, 2002, p. 6.
- [8] Id. at 7.
- [9] Rollo, p. 4.
- [10] Id. at 5.
- [11] Id. at 7.
- [12] Id. at 23.
- [13] Id. at 30.
- [14] TSN, December 17, 2002, pp. 2-6.
- [15] TSN, June 3, 2003, pp. 2-4.
- [16] CA rollo, p. 17.
- [17] Id.
- [18] Id. at 16.
- [19] Id. at 16-17.
- [20] Id. at 18.
- [21] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [22] CA rollo, p. 15.
- [23] Id. at 11.
- [24] Id. at 12.
- [25] Id. at 13.
- [26] Id. at 14.
- [27] Id. at 122-123.
- [28] Id. at 30-42.
- [29] Rollo, p. 32.
- [30] Id. at 33-39.
- [31] Id. at 36.
- [32] Id. at 39.
- [33] Id. at 40.
- [34] Id. at 41.
- [35] *People v. Cañizares*, 194 Phil. 283, 299 (1981), citing *People v. Sales*, G.R. No. L-29340, April 27, 1972, 44 SCRA 489.
- [36] *People v. Ondalok*, G.R. Nos. 95682-83, May 27, 1997, 272 SCRA 631, 631.

[37] G.R. No. 112982, December 29, 1995, 251 SCRA 690.

[38] *People v. Prado*, id. at 697.

[39] Rollo, p. 11.

[40] Exh. "A": "T: Nakilala mo ba kung sino ang mga taong sinasabi mong bumaril?

S: Ang isa po ay si Warren dela Cruz y Francisco na taga People's Village, Dampalit, Malabon, Metro Manila at ang kanyang dalawang kasamahan na kung aking makikita ay aking makikilala."

[41] TSN, September 13, 2001, p. 4.

[42] Id. at 7.

[43] *Cosme, Jr. v. People*, G.R. No. 149753, November 27, 2006, 508 SCRA 190, 206-207, citing *People v. Dionisio*, 425 Phil. 616, 623 (1981).

[44] *People v. Peñaranda*, 194 Phil. 616, 623 (1981).

[45] G.R. No. 143487, February 22, 2006, 483 SCRA 31.

[46] *Ferrer v. People*, id. at 52.

[47] G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664.

[48] TSN, December 17, 2002, pp. 2-5.

[49] Records, pp. 5, 7 9.

[50] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 735, citing *People v. Pansensoy*, 437 Phil. 499, 518 (2002); *People v. Atadero*, 435 Phil. 888, 904 (2002).

[51] Rollo, p. 39.

[52] Revised Penal Code, Art. 14(16); *People v. Lunar*, 150-A Phil. 466, 490 (1972).

[53] *Concepcion v. People*, G.R. No. 167135, November 27, 2006, 508 SCRA 271, 278.

[54] TSN, November 17, 2002, pp. 2-4, 6-8; TSN, September 13, 2001, pp. 2-8.

[55] *U.S. v. Tandoc*, 40 Phil. 954, 957-958 (1920); *People v. Caroz*, 68 Phil. 521, 527 (1939).

[56] G.R. No. 124686, March 5, 2001, 353 SCRA 643, citing *People v. Sanchez*, G.R. No. 118423, June 16, 1999, 308 SCRA 264, 286.

[57] Rollo, p. 39.

[58] 435 Phil. 417 (2002).

[59] *People v. Aquino*, id. at 422-427.

[60] Rollo, pp. 4-5.

[61] *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34; *People v. Ibañez*, G.R. Nos. 133923-24, July 30, 2003, 407 SCRA 406, 430, citing *People v. Bernal*, G.R. Nos. 132791 140465-66, September 2, 2002, 388 SCRA 211; *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, citing *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

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