

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JONEL FALABRICA SERENAS AND JOEL LORICA LABAD, ACCUSED-APPELLANTS.

G.R. No. 188124. June 29, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

Before us on appeal is the Decision[1] of the Court of Appeals affirming the Judgment[2] of the Regional Trial Court (RTC) of Parañaque in Criminal Case No. 02-01426 convicting appellants Jonel Falabrica Serenas alias "Joe-An" (Joe-An) and Joel Lorica Labad (Joel) of the crime of murder.

Appellants were charged under the following Information:

That on or about the 8[th] day of December 2002 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one John Doe, whose true name and present whereabouts is still unknown, and all of them mutually helping and aiding one another, with intent to kill, treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab one Nino Noel Ramos, thereby inflicting upon him serious and mortal stab wound, which caused his death.[3]

The facts, as narrated by prosecution witnesses, follow -

On 8 December 2002, at around 10:00 o'clock in the evening, Niño Noel Ramos (Niño) had just brought his girlfriend, Dianne Charisse Gavino (Dianne), home in Sto. Niño, Parañaque City. On his way back to La Huerta, he passed by a bridge connecting the barangays of Sto. Niño and La Huerta. Thereat, Niño was stabbed and mauled.[4]

Cesar Ramos (Cesar), Niño's brother, was in the vicinity of N. Domingo Street in La Huerta when he heard a commotion on the bridge. As he was about to proceed to the bridge, he met Niño and noticed that his brother was soaked in his own blood. Niño relayed to Cesar that he was stabbed by Joe-An. Cesar immediately brought Niño to the hospital where the latter expired thirty (30) minutes later.[5] At the police station, Cesar claimed that appellants told him that they merely "took fancy" on Niño.[6]

Dianne initially related in her affidavit executed at the police station that her cousin informed her of a commotion on the bridge. Upon reaching the bridge, she met a friend who told her that her boyfriend, Niño, was stabbed and brought to the hospital. She added that one day before the incident, she and Niño were walking along the bridge when they passed by the group of appellants and heard Joe-An utter the words, "Iyang mama na iyan, may araw din siya sa akin." [7] In her testimony during the trial however, she narrated that she actually saw Joe-An stabbing Niño.[8]

PO3 Ramoncito Lipana (PO3 Lipana) was at the police station in La Huerta on 8 December 2002 when a woman named Dianne came to report a stabbing incident involving her boyfriend. PO3 Lipana, together with PO2 Jesus

Brigola (PO2 Brigola) and PO3 Marlon Golfo, immediately proceeded to the crime scene. Upon arriving thereat, the police saw two men scampering away upon seeing them. They chased the two men, later identified as Joe-An and Joel. The police managed to catch the appellants while they were hiding near a bangka under the bridge. Appellants were brought to the police station where Dianne identified them as the assailants of Ni×jo.[9]

Dr. Valentin T. Bernales (Dr. Bernales), the medico-legal officer who issued the autopsy report, testified that the victim was stabbed twice at the back and the assailant was situated within arm's length. The victim succumbed from the stab wounds, both of which, are fatal. Dr. Bernales also noted that there were contuse abrasions on different parts of the victim's body.[10]

Appellants invoked denial and alibi as their defense. Joe-An, a resident of Wawa, Sto. Ni×jo, alleged that he was at his house on 8 December 2002. While he was taking his dinner, he saw people running towards the bridge. He went out of the house to check on what had happened. He approached a group of people talking about the commotion. Thereafter, he saw the police and barangay tanods arrive. He was immediately handcuffed and asked to go with the police. Joe-An alleged that he was physically forced by the police to admit the killing of Ni×jo.[11] Joe-An denied knowing the victim or his girlfriend, Dianne, but admitted that Joel is an acquaintance.[12]

Joel likewise denied his participation in killing Ni×jo. He stated that he was sleeping at around 11 p.m. on 8 December 2002 when he was awakened by an argument involving his mother and four (4) men outside his room. He then got out of the room and saw PO3 Lipana, PO2 Brigola, and two other police "assets." The group invited him for questioning. When the two assets suddenly grabbed him, Joel resisted but he was forcibly brought to the police station. He saw Dianne at the station but the latter did not identify him as the culprit. Instead, Dianne even sought his help to identify the person who killed her boyfriend. This fact notwithstanding, the police refused to let him go. He testified that he did not know the victim or Dianne personally.[13]

After trial, the RTC rendered judgment convicting appellants, the dispositive portion of which reads:

WHEREFORE, considering that the prosecution was able to prove the guilt of both accused beyond reasonable doubt, accused JONEL FALABRICA SERENAS alias JOE-AN and JOEL LORICA LABAD are hereby sentenced to suffer the penalty of RECLUSION PERPETUA pursuant to R.A. 9346 which repealed the death penalty law. However, pursuant to Sec. 3 thereof, they are not eligible for parole.

Accused JONEL FALABRICA SERENAS alias JOE-AN and JOEL LORICA LABAD are jointly and severally liable to pay the heirs of NI×JO NOEL RAMOS, the following amounts, to wit:

- P50,000.00 as civil indemnity ex-delicto;
- P50,000.00 as moral damages;
- P23,000.00 as actual damages;
- P20,000.00 as and by way of attorney's fees; and
- To pay the cost of suit.[14]

Lending full credence to the testimonies of the prosecution witnesses, the trial court concluded that the appellants conspired in assaulting and stabbing Ni×jo. It gave full weight to the dying declaration uttered by Ni×jo to his brother, as well as the statement of Dianne, who allegedly witnessed appellants threaten Ni×jo the night before the incident. It also appreciated the aggravating circumstances of treachery and evident premeditation in the commission of the crime. Furthermore, the trial court regarded the uncorroborated testimonies of appellants to be "full of inconsistencies and unworthy of weight and credence." [15]

On 13 September 2006, appellants filed a notice of appeal informing the RTC that they are appealing the decision

to the Court of Appeals.[16]

The Court of Appeals affirmed with modification the decision of the RTC by awarding exemplary damages in the amount of P25,000.00. Thus:

WHEREFORE, premises considered, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED with the MODIFICATION that exemplary damages in the amount of P25,000.00 is awarded to the heirs of the victim. The Decision in all other respects STANDS.[17]

On 13 August 2008, a notice of appeal was filed assailing the decision of the Court of Appeals before this Court.[18]

On 26 October 2009, the parties were required to simultaneously file their respective supplemental briefs.[19] In two (2) separate manifestations, both parties opted to adopt their briefs submitted before the Court of Appeals.[20]

Summarizing the arguments of both parties, the issues to be resolved are: (1) whether the testimonies of the witnesses are sufficient to prove appellants' guilt beyond reasonable doubt; (2) whether the killing was qualified by treachery and evident premeditation; (3) whether conspiracy has been adequately proven.

In convicting appellants, the lower courts relied heavily on the testimonies of witnesses Cesar and Dianne, which they deemed to be credible. Jurisprudence dictates that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded great respect, if not conclusive effect, more so when affirmed by the Court of Appeals. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances that, if considered, would change the outcome of the case.[21]

We respect the findings that Jonel Falabrica Serenas is guilty beyond reasonable doubt of murder not by virtue of identification by Dianne but as established by the dying declaration of the victim. Upon the other hand, we reverse the conviction of Joel Lorica Labad.

The trial court, as affirmed by the Court of Appeals, accorded full weight to the testimony of the prosecution witness, Dianne, who declared on the witness stand that she actually saw appellants maul and stab the victim, thus:

Q

Miss witness, do you know the person of Niño Noel Ramos?

A

Yes, sir.

Q

Why do you know him?

A

He was my boyfriend, sir.

Q

And where is Niño Noel Ramos now?

A

He's dead already, sir.

Q

Why do you know that he is dead?

A

Because I saw that day when he was stabbed, sir.

Q

You said that you know when he was stabbed. When was that?

A

On December 8, 2002, sir.

Q

What time was that?

A

At around 10:00 in the evening, sir.

Q

Where did it happen?

A

It happened on a bridge between La Huerta and Sto. Ni×jo, Para×jaque City, sir.

Q

Do you know the person who killed your boyfriend?

A

Yes, sir.

Q

If they are inside the courtroom, can you point to them?

COURT:

Witness pointing to the second and the third detention prisoners from among five (5) who when asked by the Court, "Ano'ng pangalan mo, `yong pangalawa?" answered by the name of Joel Labad. "IKaw? "Jonel Serenas po." [22] [emphasis supplied]

Appellants argue that Dianne gave conflicting statements regarding the identity of the assailants. In her affidavit, she narrated that a friend informed her that Ni×jo was stabbed and taken to the hospital. During trial however, Dianne testified that she witnessed the actual stabbing incident.

The Office of the Solicitor General (OSG) refutes the alleged inconsistencies in the statements made by Dianne in the affidavit and during trial. It claims that Dianne was categorical in her testimony that she saw appellants stab her boyfriend. Furthermore, her testimony in open court is superior to statements made in her affidavit, which

statements may have been made when she was not in her right mind.[23]

The Court of Appeals dismissed the alleged inconsistencies by giving greater weight to the statement made in court by Dianne than that made in the affidavit she executed before the police.

We do not agree.

Dianne's testimony is doubtful to say the least. This Court is mindful of the rule that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken ex-parte are usually incomplete and inaccurate. Corollary to this is the doctrine that, where the discrepancies are irreconcilable and unexplained and they dwell on material points, such inconsistencies necessarily discredit the veracity of the witness' claim.[24] The second rule is apt to the case at bar.

Nowhere in her affidavit did Dianne point to appellants as the perpetrators of the crime. From the tenor of her affidavit, Dianne's suspicion that appellants committed the crime merely arose from the alleged threats made by appellants on the victim the day before the incident. The pertinent portion of her affidavit is hereby reproduced:

T: Mayroon ka bang natatandaan pagbabanta kay Ni×;o Noel bago ito nangyari sa kanya?

S: Opo, naalala ko po kahapon ika 7 ng Disyembre 2002 humigit kumulang na alas 9:45 ng gabi noong kami ay papauwi dahil hinatid niya ako sa bahay, pagdaan naming sa Wawa Sto. Ni×;o may apat na kalalakihan, naka upo sa may daanan malapit sa laruan ng pool, ang isa ay narinig ko nagsalita ng "IYANG MAMA NA IYAN, MAY ARAW DIN SIYA SA AKIN," hindi ko naman ito pinansin at tuloy tuloy po ang lakad namin.

T: Nakilala mo ba kong sino ang apat na kalalakihan?

S: Akin pong napag-alaman ang dalawang magkatabi na sina, Michael Baluyot at @Joe-An.

T: Sino naman ang iyong narinig nagsalita ng pagbabanta sa kanila kong natatandaan mo pa?

S: Opo, si @Joe-An po.

T: May ipapakita ako sa iyo, ano ang masasabi mo?

S: Opo, siya po ang nagsalita ng pagbabanta, affiant pointing to the person when asked identified himself as JONEL SERENAS Y FALABRICA, @Joe-An, 23 yrs. old, single, jobless, residing at 5058 Wawa Sto. Ni×;o, P'que City.

T: Mayroon akong ihaharap sa iyo, ano naman ang iyong masasabi sa kanya?

S: Opo, siya po ang sumagot kay Joe-An ng "Oo nga, Oo nga" na umaayon sa nasabing pagbabanta, affiant pointing to the person inside investigation when asked voluntarily identified himself as MICHAEL BALUYOT Y ALIC, 17 yrs old single of 117 Wawa, Sto. Ni×;o, P'que City referred to this office by PO2 Ramoncito Lipana, et al. for investigation.[25]

We cannot simply brush aside the fact that while Dianne pointed to the persons who threatened to do harm on the victim, she failed to identify who the perpetrators of the crime are. To the mind of the Court, this omission in Dianne's affidavit is so glaring on a material point, i.e., the failure to attribute authorship to the crime. Therefore, the testimony of Dianne altogether becomes suspect.

Nevertheless, the prosecution's case did not necessarily crumble. The victim's dying declaration is a most telling evidence identifying Joe-an.

Appellants question the alleged dying declaration of the victim in that they were not sufficiently identified as the persons responsible for Ni×;o's death. Appellants anchor their argument on the utterance of the word "Joe-An"

when the victim was asked on who stabbed him. Appellants advance that the victim may have been referring to some other person. Moreover, the victim did not even mention "Joel" or "Joel Labad," the other suspect.[26]

The OSG defends the victim's dying declaration and insists that there was no mistake that the victim was indeed referring to Joe-An, considering that the latter was familiar to him.[27]

As an exception to the rule against hearsay evidence, a dying declaration or ante mortem statement is evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation.[28]

In order for a dying declaration to be held admissible, four requisites must concur: first, the declaration must concern the cause and surrounding circumstances of the declarant's death; second, at the time the declaration was made, the declarant must be under the consciousness of an impending death; third, the declarant is competent as a witness; and fourth, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.[29]

Niño's ante mortem statement was relayed to his brother Cesar, in this wise:

Q

Cesar, will you please tell this Honorable court where were you on the night of December 8, 2002 at about 9:30?

A

I was near the crime scene, sir.

Q

Where is this place?

A

In N. Domingo, La Huerta, Parañaque City, sir.

Q

At that time, what did you notice?

A

There was a commotion on top of the bridge, sir.

Q

So, what did you do?

A

We verified it, sir.

Q

After that, what did you do?

A

I saw my brother coming, sir.

Q

Who is this brother of yours that you saw?

A

Niño Noel Ramos, sir.

Q

When you saw Niño Noel approaching, what did you do?

A

I asked him what the commotion was all about, sir.

Q

What did he answer?

A

He told me that he was stabbed, sir.

Q

What else did he tell you?

A

I asked him who stabbed him, sir.

Q

What was his answer?

A

He answered [to] me that it was Joe-an, sir.

Q

What else did he tell you?

A

He asked me to bring him to the hospital, sir.

Q

What did you do when he asked you to bring him to the hospital?

A

I held him up and brought him to the hospital, sir.

Q

Why? What was the condition of your brother at that time?

A

He was bloodied, sir.[30]

All requisites for a dying declaration were sufficiently met by the statement of the victim communicated to Cesar. First, the statement pertained to Ni×jo being stabbed, particularly pin-pointing Joe-An as the perpetrator. Second, Ni×jo must have been fully aware that he was on the brink of death considering his bloodied condition when Cesar met him near the bridge. Third, the competence of Ni×jo is unquestionable had he survived the stabbing incident. Fourth, Ni×jo's statement was being offered in a criminal prosecution for his murder.

Note however that based on the testimonies of witnesses, there was no direct evidence linking appellant Joel to the crime. Cesar testified, thus:

Q

But you only knew that there was a stabbing incident when you were told by the victim that he was stabbed?

A

Yes, sir.

Q

And he told you that he was stabbed by a certain, who was that?

A

Joe-an, sir.

Q

Only Joe-an?

A

Yes, sir.

Q

And aside from this, he was not mentioning any other person?

A

That is the only name he mentioned but there were three (3) or four (4) persons who mauled him, sir.

Q

The accused in this case, of course, you do not know them?

A

I know them by their faces, sir.

Q

Why did you say so?

A

Because I often pass by that place, sir.

Q

But you did not see these persons at that time of the incident?

A

I saw them but I cannot see their faces because it was quite far, sir.

Q

And you only came to know about these persons at the police precinct, is that correct?

A

Yes, sir.

Q

Because Dianne and your brother told you so?

A

Yes, sir.[31] [Emphasis supplied]

While the police officers caught Joel hiding under the bridge, this incident appears to be circumstantial and cannot stand to prove Joel's complicity without any corroborating evidence. Admittedly, Joel's defense of denial and alibi are inherently weak, however, it is doctrinal that the weakness of the defense cannot be the basis for conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight and who must establish by proof beyond reasonable doubt the guilt of the accused before there can be conviction.[32] At this juncture, we acquit appellant Joel.

With respect to Joe-An, the lower courts properly appreciated the presence of treachery in qualifying the crime to murder.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[33]

The medical records support the finding of treachery. The nature and location of his wounds are indicative of the positions of the victim and his assailant at the time the incident occurred. The trial court drew a better picture of how the victim was stabbed, thus:

It is clear under the circumstances that the victim has no opportunity to retaliate the aggression of the accused when he was stabbed because according to Dr. Valentin Bernales, Medico-Legal Officer of the National Bureau of Investigation considering the locations of the wound which was sustained by the accused, the assailant was about an arm [sic] length away and believed to be at the back of the victim who was standing and almost in the same level when the first stab wound was inflicted. As to the second wound, according to Dr. Bernales, the victim appears already lying face down on the ground when stabbed by the accused which to some extent is consistent with the testimony of Cesar that his brother/victim was mauled by four (4) other persons. This may be the reason why the victim sustained contuse abrasions on the different parts of his body.[34]

The victim was suddenly attacked by appellant on his way home from his girlfriend's house. He was stabbed twice from behind. The mode of attack on the victim was clearly executed without risk to the attacker. We cannot discount the fact that there were other participants to the crime. Appellant could not have acted alone based on the testimony of the witnesses and the medico-legal report. However, the identity of the other assailants was not proven by the prosecution.

While affirming that treachery attended the commission of the crime, we however rule out the presence of evident premeditation.

In order for evident premeditation to be appreciated, the following requisites must be proven: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. In the instant case, appellant uttered the words "iyang mama na iyan, may araw din siya sa akin." Even conceding that these utterances were in the form of a threat, it still cannot be presumed that at the time they were made, there was indeed a determination to kill and that appellants had indeed clung to that determination, planning and meditating on how to kill the victim.

Finally, appellants question the sufficiency of evidence to prove conspiracy. They aver that there was no concerted action pursuant to a common criminal design between the appellants. Moreover, the manner by which appellants conspired with one another in stabbing the victim was not discussed in the trial court's decision.[35]

The OSG submits that conspiracy may be deduced from the manner by which the crime was perpetrated. It recalled that appellants waited by the bridge where the victim passes by whenever he visits his girlfriend. Upon seeing the victim, they grabbed and mauled him. Moments later, Joe-Ann stabbed the victim. Thereafter, appellants escaped and hid under the bridge where they were eventually apprehended. Clearly, they have performed overt acts in furtherance of the common design of killing the victim.[36]

There is nothing on record that would prove that conspiracy existed. The circumstantial evidence cited by the OSG are not sufficient to prove that appellant conspired with other individuals to perpetrate the crime. Further lending doubt to this claim is the fact that the alleged co-conspirator's identity was not established.

In sum, we find that the prosecution has proven that appellant Joe-An is guilty beyond reasonable doubt for the crime of murder. The acquittal of the other appellant, Joel, is in order on the ground of reasonable doubt.

As to appellant's pecuniary liability, we find it proper to increase the award of civil indemnity and moral damages to P75,000.00[37] each. The trial court's grant of P23,000.00 as actual damages is increased to P25,000.00, but as temperate damages in line with the ruling in *People v. Villanueva*. [38] We uphold the grant of P20,000.00 as attorney's fees, with the victim's mother having hired a private prosecutor to prosecute the case. [39] We increase the award of exemplary damages to P30,000.00 in line with recent jurisprudence. [40]

WHEREFORE, the Decision of the Court of Appeals is hereby MODIFIED.

Appellant JONEL FALABRICA SERENAS is found GUILTY of the crime of murder and is sentenced to suffer the penalty of reclusion perpetua. He is ordered to pay the heirs of the victim Niño Noel Ramos the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages; P30,000.00 as exemplary damages, P25,000.00 as temperate damages and P20,000.00 as attorney's fees.

For failure of the prosecution to establish his guilt beyond reasonable doubt, appellant JOEL LORICA LABAD is ACQUITTED. The Director of Prisons is ordered to cause his immediate release, unless he is being held for some other lawful cause, and to inform this Court of such action within five days from receipt of this Decision.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

- [1] Penned by Associate Justice Edgardo F. Sundiam with Associate Justices Pampio A. Abarintos and Arturo G. Tayag concurring. Rollo, pp. 2-20.
- [2] Presided by Judge Raul E. De Leon. CA rollo, pp. 16-26.
- [3] Records, p. 1.
- [4] Id. at 12.
- [5] TSN, 3 February 2004, pp. 5-8.
- [6] Id. at 11.
- [7] Id. at 12.
- [8] TSN, 8 June 2004, pp. 92-93.
- [9] TSN, 21 October 2003, pp. 33-36.
- [10] Id. at 12-29.
- [11] TSN, 22 September 2005, pp. 5-11.
- [12] Id. at 21-23.
- [13] TSN, 8 February 2005, pp. 4-13.
- [14] CA rollo, p. 26.
- [15] Id. at 20-25.
- [16] Id. at 28.
- [17] Rollo, p. 19.
- [18] Id. at 21.
- [19] Id. at 28.
- [20] Id. at 29-30 and 32-33.
- [21] *People v. Oliva*, G.R. No. 187043, 18 September 2009; *People v. Anod*, G.R. No. 186420, 25 August 2009, 597 SCRA 205, 211; *People v. De la Cruz*, 446 Phil. 549, 561 (2003).
- [22] TSN, 8 June 2004, pp. 5-7.
- [23] CA rollo, pp. 90-94.
- [24] *People v. Villanueva, Jr.*, G.R. No. 187152, 22 July 2009, 593 SCRA 523, 541-542; *People v. Tampon*, 327 Phil. 729, 738 (1996); *People v. Aniscal*, G.R. No. 103395, 22 November 1993, 228 SCRA 101, 112.
- [25] Records, p. 12.
- [26] CA rollo, pp. 50-52.
- [27] Id. at 90.
- [28] *People v. Cerilla*, G.R. No. 177147, 28 November 2007, 539 SCRA 251, 262-263; *People v. Cortezano*, 425 Phil. 696, 716 (2002).

[29] People v. Cerilla, id.

[30] TSN, 3 February 2004, pp. 5-7.

[31] Id. at 14-16.

[32] People v. Fabito, G.R. No. 179933, 16 April 2009, 585 SCRA 591, 613.

[33] People v. Lacaden, G.R. No. 187682, 25 November 2009.

[34] CA rollo, p. 24.

[35] Id. at 58-59.

[36] Id. at 96-97.

[37] People v. Satonero, G.R. No. 186233, 2 October 2009

[38] 456 Phil. 14 (2003).

[39] TSN, 10 August 2004, pp. 6-7.

[40] People v. Mortera, G.R. No. 188104, 23 April 2010; People v. Gutierrez, G.R. No. 188602, 4 February 2010.

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