

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO PASTORAL Y TAMONDONG, ACCUSED-APPELLANT.***G.R. No. 51686. September 10, 1993*

Ponente: BELLOSILLO, J.

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On the night of 19 January 1978, members of the Dagupan Police Force, acting on a verbal report, arrived at the store of one Natalia Claveria and found the prostrate body of Rodolfo Meneses, his intestines protruding. His death, caused by acute hemorrhage from a gaping stab wound in the abdomen, 5-1/2 by 1-1/4 inches, was attributed to accused-appellant GREGORIO PASTORAL, who was subsequently convicted of murder by the Circuit Criminal Court of Dagupan City on 15 June 1979[1] and sentenced to reclusion perpetua as well as to indemnify the heirs of Meneses in the amount of P12,000.00.

The facts presented by the prosecution, and adopted by the trial court, are substantially as follows: At about 9:00 o'clock in the evening of 19 January 1978, Jaime Callanta, Bonifacio Lagman, Rudy Soriano and the deceased Rodolfo Meneses were seated, in that order, at the counter of Natalia Claveria's store conversing. About ten minutes later, accused Pastoral appeared and talked briefly to Callanta and Lagman, warning them not to meddle ("walang makikialam"). Then, heading straight to where Meneses was seated, Pastoral who was concealing a knife, suddenly lunged at him but missed. As Meneses fell inside the store, the accused pursued him by jumping over the counter. Rising, Meneses lifted a bench nearby and with it warded off the second attack of the accused. The effort proved futile as the assailant succeeded in wounding Meneses in the stomach, which turned out to be fatal.

In this appeal, the accused contends that the trial court erred in convicting him of murder, and without any mitigating circumstance, and in not acquitting him on reasonable doubt. He avers that of the eleven (11) prosecution witnesses presented, only one pointed to him as the knifewielder. That witness was Bonifacio Lagman, whose credibility is suspect. Aside from being biased, his testimony was saturated with vague, incoherent and contradictory statements.

First. While Lagman stated on direct examination that Meneses tried to defend himself with a "chair",[2] on cross-examination he said that it was actually a "bench" or "banco"[3] that Meneses used. But that apparent discrepancy was adequately explained during the trial.[4] "Banco" is the local term for the particular long chair used by the deceased. Hence, when Lagman mentioned "banco" during cross-examination instead of the word "chair" which he used in his direct-examination, he was not contradicting himself as he was only calling that particular chair by its more popular name in the locality.

Second. The accused points out that Lagman had doubts as to the exact "seating arrangement" of Meneses and his three (3) companions at the store counter right before the killing, and that the witness was also uncertain whether Meneses grabbed the chair before or after the accused leaped over the counter to stab his "quarry" again.

Such inconsistencies are inconsequential. A certain latitude must be given to whatever minor mistakes the witness

might have said about the actual confrontation. For apart from the shock and numbing effect of the whole incident, the rapidity with which the sequence of events took place must have taken its toll on the accuracy of the 'witness' account.

Third. The accused also argues that whatever residue of credibility is left of Lagman's testimony has been shattered by the "crowning" contradiction found between his sworn statement before the Office of the Investigation Section of the Dagupan Police Station[5] and his oral testimony in court. Specifically, the sworn statement narrates that Lagman suddenly "saw Rodolfo Meneses entered (sic) the x x x store followed by Gregorio Pastoral x x x with a bladed weapon in his right hand then attacked and stab (sic) Rodolfo Meneses but luckily this Rodolfo Meneses was able to grab a wooden stall (chair) and use the same in defending himself. But then x x x Gregorio Pastoral x x x made another thrust of the weapon in his hand and Rodolfo Meneses was hit on his stomach and as a result he fell to the cemented flooring of the store. Then Gregorio Pastoral hurriedly went outside the store still holding the fatal weapon in his hand and then faced (Lagman) and Jaime Callanta and warn (sic) x x x both not to intervene then fled away."

On the other hand, Lagman testified in court that it was before proceeding to where Meneses was seated that the accused made the warning; that the accused initially attempted to stab Meneses, albeit unsuccessfully, while the latter was still seated on the store counter;[6] that after succeeding in his purpose, accused just walked away from the store and headed towards the east.[7]

The contradiction between Exh. "1" and the oral testimony is not fatal. Apart from the fact that Exh. "1" was read to Lagman at 4:00 o'clock in the morning following the incident, at a time when he was understandably feeling tired and sleepy, the rule is that in case of inconsistencies between the affidavit and the court testimony, the latter is to be given more weight.[8] Taken ex parte and commonly prepared by someone other than the affiant himself, affidavits are usually incomplete and partially inaccurate due to suggestions or want of suggestions and inquiries which may be necessary for the accurate recollection of all relevant matters.[9] In fact, the infirmity of affidavits as a specie of evidence is much a matter of judicial experience, for which reason, it has been held that variances between affidavit and court testimony do not by themselves affect credibility.[10]

Fourth. The accused concludes that being a neighbor and friend of Meneses, Lagman was partial for Meneses.[11] This, undoubtedly is non sequitur. Well settled is the rule that mere relationship of the victim to a witness does not automatically impair his credibility as to render his testimony less worthy of credence where no improper motive can be ascribed to him for testifying.[12] Consequently, we give credence to the testimony of witness Lagman that appellant stabbed the victim to death.

Accused Pastoral claims that Meneses was the initial aggressor. He recounted that he just went to the store of Natalia Claveria to buy brewed rice. While there, Meneses with three (3) companions offered him a drink, which he refused. Feeling slighted, Meneses pushed the glass towards his (accused) mouth but he shoved it aside, spilling the contents on Meneses' chest. Meneses then threw the glass at the accused but missed him. To avert a fight, he embraced Meneses and they both fell over the counter and into the store. Meneses stood up and brandished a "balisong" prompting him to grab a bench to shield himself from the assault. The initial thrust by Meneses missed the accused but the chair he was holding fell from his hands when the former attempted to stab him the second time. However, he was able to grab the left hand of the deceased that was holding the "balisong". They grappled for its possession, but as they fell on the cement floor the knife pierced the stomach of Meneses causing his death.

Defense witness Alfredo Bengson, claiming to be in conversation with Oling Biala some four (4) meters away, corroborated the story of Pastoral. He testified that on his way to Claveria's store,[13] the accused walked past

him, and even greeted him.

Several reasons impel us to discard Bengson's testimony, as the court a quo did. It strains the imagination how Bengson could have seen Pastoral and Meneses fall, with the former on top of the latter, considering that he was some four (4) meters away on the opposite side of the road^[14] with a store counter blocking his view. Biala himself denied having seen anybody or witnessed anything in the course of his conversation with Bengson.^[15]

Absent a credible corroborating testimony, we cannot accept the self-serving assertion of Pastoral that it was Meneses who was the aggressor and that the killing was accidental. Aside from Bengson, none of those present at the store testified for the accused. Natalia Claveria, Bonifacio Lagman and Roberto Sanchez testified for the prosecution, while the victim's two (2) companions, Rudy Soriano and Jaime Callanta, himself a distant relative of Pastoral, could not even be summoned to appear in court. Besides, while the accused claims innocence, his actuations subsequent to the killing betray his guilt. Under the circumstances, an innocent man would have stayed and done everything possible to save the victim's life, especially when he sees the victim writhing in pain from the stab wound he had inflicted. But Pastoral did no such thing. Instead, after "accidentally" wounding Meneses, Pastoral left the scene, went home and headed straight for bed, with nary a word to his wife about the tragic incident,^[16] apparently unconcerned that at that very moment the man whom he calls "kuya"^[17] could have already breathed his last.

The accused contends that the trial court erred in disregarding the mitigating circumstance of voluntary surrender in his favor. This is untenable.

Pastoral testified that after the killing, he went directly home and, without telling his wife that he had accidentally stabbed Meneses, slept up to past 1:00 o'clock in the morning^[18] when he was suddenly awakened by "persons" informing him that Rodolfo Meneses was already dead. He did not recognize those "persons". Afraid that the victim's relatives would take revenge on him, he "stealthily" went to his father's house,^[19] then to his father-in-law's place in Calasiao. After telling his relatives about the stabbing incident, Pastoral made up his mind to surrender to the authorities there. However, on second thought, he decided to surrender to the Dagupan Police instead. He was actually on his way to Dagupan City on board a jeepney when he saw Pat. Pablo Lazo and Pfc. Morante and yielded himself to them.^[20]

The testimony of Pat. Lazo ruled out voluntary surrender. He declared that while he and Pfc. Morante were stationed in front of the Pangasinan Village Inn for the purpose of flagging down all passenger jeepneys to find the accused, a passenger mini-bus heading towards Urdaneta (located in the opposite direction of Dagupan) passed by at about 4:30 o'clock in the morning of 20 January 1978. Pat. Lazo boarded said mini-bus and spotted the accused bending, with his head bowed,^[21] apparently hiding himself from the police.

As between the testimony of a police officer who enjoys the presumption of regularity in the performance of his official duties and Pastoral's self-serving assertion, we are inclined to accept the testimony of the officer as the true account of the alleged "surrender". Besides, as adverted to above, the actuations of Pastoral after the incident were inconsistent with his innocence. The trial court, therefore, did not err when it convicted Pastoral without appreciating the attenuating circumstance voluntary surrender.

Anent the trial court's conclusion that the crime committed was murder, it should be noted that the Information alleges treachery and evident premeditation. But the trial court, while rejecting the presence of treachery, considered against appellant the qualifying circumstance of evident premeditation.

We hold that neither circumstance was conclusively established to qualify the killing to murder.

According to the prosecution, Pastoral went to the house of Meneses sometime in July 1977 to ask the latter not to

testify against him in a theft case.[22] Meneses refused[23] and went ahead with his testimony during the hearing in the afternoon of 19 January 1978. That evening, at Natalia Claveria's store, the accused talked briefly with Jaime Callanta and Bonifacio Lagman, who were then seated beside Meneses, and warned them not to intervene.[24] Then he walked towards Meneses and drew his knife. The first thrust missed its mark but the second was fatal in spite of Meneses' attempt to elude the blow.[25]

The attendant circumstances negate treachery. There is treachery only when the offender commits any of the crimes against persons, 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.[26]

Thus, the killing was not treacherous when the would-be killer attacked his victim in a public place in front of the latter's three (3) companions and the store owner, who could all recount the startling occurrence and even lend support to the victim in the prosecution of his assailant. In addition, the assault itself was not so sudden because when Pastoral arrived at the store, he did not immediately head towards his prey but even found time to talk briefly with Callanta and Lagman, warning them not to interfere. It is not difficult to conclude then that Meneses, who must have had an inkling that Pastoral was not too happy about his (Meneses) adverse testimony in court earlier that afternoon, had an opportunity to apprise himself of the presence of the accused and brace himself up against any possible attack from the latter, in whatever form it might take. The opportunity proved itself useful, for the initial attempt of the accused to stab Meneses failed, and that the latter even had time to defend himself against the second assault, albeit unsuccessfully.

The court a quo found that the accused committed the crime with evident premeditation, drawing its conclusion from the testimonies of his common-law wife Norma Basa, and Roberto Sanchez. From Basa, the trial court deduced that Pastoral had earlier threatened Meneses, and from Sanchez, that the accused had told him that he would "kuan Elias."

The finding that Pastoral had previously threatened the deceased is not supported by the records. Norma Basa testified that Pastoral went to their house in July 1977 and asked her husband not to testify in the theft case against Pastoral. Contrary to the finding of the trial court, Norma did not state that the accused threatened her husband. This is evident from her testimony -

"Q. Before the death of your common-law husband, Rodolfo Meneses, was there any occasion when you saw the accused Gregorio Pastoral, Jr. in your house?

"A: Yes, sir, last July.

"Q: Of what year?

"A: 1977.

"Q: How did the accused happen to go to your residence in the month of July 1977?

"A: He was asking not to testify in the case against him.

"Q: Whom did the accused ask that he will not testify against the accused.

"A: Both of us, sir.

"Q: You said both of us, to whom are you referring the word us?

"A: My husband, sir.

"Q: You are referring to Rodolfo Meneses, your common law husband?

"A: Yes, sir.

"x x x

"Q: Was the accused able to convince your common law husband from not testifying against him?

"A: No, sir"[27] (underscoring supplied).

Conspicuously absent is any mention of supposed threats by the accused made on the person of the deceased. On the contrary, only the words "ask" and "convince" were used. Hence, the conclusion of the trial court that the accused threatened Meneses sometime in July 1977 is clearly without factual basis.

Roberto Sanchez, in turn, testified on direct examination that he saw the accused twice on 19 January 1978, the first in the house of a certain Boy Castillo between 8:00 and 9:00 o'clock in the morning,[28] and once again at the railroad tracks just before the stabbing incident. Pastoral was then armed with a knife and was walking fast towards the direction of Claveria's store.[29]

However, during the cross examination six (6) days later, Sanchez testified that he actually saw the accused thrice, i.e., in addition to the meeting at Boy Castillo's house, he met and talked with Pastoral at the railroad tracks at 10:00 o'clock in the morning of 19 January 1978, and that after inquiring about the whereabouts of Meneses, Pastoral told him that he would "kuan Elias". Meneses was also known as "Elias" in the neighborhood.[30]

We cannot, as the trial court did, consider the above testimony of Sanchez as evidence of the time when the accused determined to commit the crime. The word "kuan" is ambiguous and susceptible of various interpretations. By itself, "kuan" cannot be construed to mean that the accused had resolved to kill Meneses prior to the moment of its execution.

To authorize a finding of evident premeditation, it must affirmatively appear from the overt acts of the accused that he definitely resolved to commit the offense; that he coolly and dispassionately reflected both on the means of carrying his resolution into execution and on the consequences of his criminal design; and, that such an appreciable length of time elapsed as to expect an aroused conscience to otherwise relent and desist from the accomplishment of the intended crime.[31]

Although the facts tend to show that accused Pastoral might have a reason to resent the deceased after the latter had testified against him in the theft case notwithstanding a request not to do so, there is no competent evidence to prove that the accused resolved to take Meneses' life. As previously discussed, that Pastoral had earlier threatened the deceased is not borne out by the records. Bearing in mind the well settled rule that evident premeditation, like other circumstances that would qualify the killing to murder, must be established by clear and positive evidence, mere presumptions and inferences being insufficient no matter how logical and probable they may be,[32] we find that such circumstance cannot be appreciated against the accused. Indeed, it cannot be drawn from mere conclusions and inferences[33] for it must be evident and not merely suspected.[34] And whenever its existence has not been established beyond doubt, the accused should be given the benefit of the doubt.[35]

The prosecution failed to adduce direct and positive evidence that accused Pastoral did intend to kill the deceased. The word "kuan" is too general and ambiguous a term to describe an intention to kill. On the contrary, the actuations of the accused immediately after the stabbing belie such intent. He walked away from the scene of the crime and slept until he was awakened and told that Meneses died. It was then that he attempted to flee.

Consequently, absent any circumstance qualifying the killing to murder, the accused should be held liable only for homicide.

The penalty for homicide as prescribed in Art. 249 of the Revised Penal Code is reclusion temporal the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, and in the absence of any aggravating or mitigating circumstances, the maximum shall be taken from the medium period of reclusion temporal, which is fourteen (14) years, eight (8) months and (1) day, to seventeen (17) years, and four (4) months, while the minimum shall be taken from the penalty next lower in degree, which is prision mayor, in any of its periods, the range of which is six (6) years and one (1) day, to twelve (12) years.

The trial court ordered the payment of P12,000.00 for the death of Rodolfo Meneses as civil indemnity. In line with recent jurisprudence, however, the amount should be raised to P50,000.00.

WHEREFORE, the conviction of GREGORIO PASTORAL, JR. Y TAMONDONG for murder is reduced to homicide. Consequently, he is sentenced to an indeterminate prison term of eight (8) years, four (4) months and one (1) day of prision mayor medium, as minimum, to fourteen (14) years, ten (10) months and ten (10) days of reclusion temporal medium, as maximum.

The civil indemnity imposed on the accused for the death of Rodolfo Meneses is increased from P12,000.00 to P50,000.00.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quiason, JJ., concur.

[1] Penned by Judge Himerio B. Garcia, Rollo, pp. 6-24.

[2] TSN, 26 July 1978, p. 7.

[3] TSN, 27 July 1978, p. 61.

[4] Id., p. 62.

[5] Exh. "1", Original Records, p. 10.

[6] TSN, 26 July 1978, pp. 32-35.

[7] Id, p. 8.

[8] People v. Gabatin, G. R. No. 84730, 28 October 1991, 203 SCRA 225, 232.

[9] Angelo v. Court of Appeals, G. R. No. 88392, 26 June 1992, 210 SCRA 402, 415.

[10] People v. Alacar, G. R. No. 64725-26, 20 July 1992, 211 SCRA 580, 595.

[11] TSN, 26 July 1978, pp. 16-17.

[12] People v. Uy, G.R. No. 84275, 14 February 1992, 206 SCRA 270, 280.

[13] TSN, 15 March 1979, p. 119.

[14] Id., p. 126.

[15] TSN, 3 April 1979, pp. 4 and 14.

[16] TSN, 29 March 1979, p. 175.

[17] Id, p. 157.

[18] TSN, 29 March 1979, p. 175.

[19] Id., p. 176.

[20] Id, p. 180.

[21] TSN, 29 August 1978, p. 106.

[22] Crim. Case No. 8689, City Court of Dagupan City.

[23] TSN, 13 March 1978, pp. 17-18.

[24] TSN, 26 July 1978, pp. 32-33.

[25] Id., p. 7.

[26] Art. 14, par. 16, Revised Penal Code.

[27] TSN, 13 March 1978, p. 17-18.

[28] TSN, 13 September 1978, p. 187.

[29] Id., p. 190.

[30] TSN, 19 September 1978, p. 226.

[31] People vs. Barba, G. R. No. 50433, 13 November 1991, 203 SCRA 436, 458; People vs. Francisco, G. R. No. 69580, 15 February 1990, 182 SCRA 305, 312.

[32] People v. Barba, G.R. No. 50433, 13 November 1991, 203 SCRA 436, 455.

[33] People v. Buka, G. R. Nos. 68311-13, 30 January 1992, 205 SCRA 567, 587; People v. Bordador, 63 Phil. 305, 311 (1936).

[34] People v. Florida, G. R. No. 90254, 24 September 1992, 214 SCRA 227, 241; People v. Narit, G. R. No. 77087, 23 May 1991, 197 SCRA 334, 350.

[35] People vs. Alvarez, 3 Phil. 24, 32 (1903).

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