

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO C. VENTURA, ACCUSED-APPELLANT.*G.R. No. 90015. April 10, 1992*

Ponente: MELENCIO-HERRERA, J.

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The accused-appellant seeks a reversal of his conviction for the crime of Murder in a Decision of the Regional Trial Court of Manila, Branch 49 (Pilot Court), promulgated on 4 May 1989, which included the sentence of reclusion perpetua, and the order to pay the amount of P30,000.00 as moral and exemplary damages.[1]

On 11 September 1991, the Court had considered this case closed and terminated in view of accused-appellant's letter of 6 March 1991 manifesting that he was no longer interested in pursuing his appeal. However, the appeal was reinstated on 22 January 1992 upon reconsideration sought by accused-appellant himself without objection from his counsel.

The accused-appellant was charged with the crime of Murder for having stabbed, with treachery, Melvin Navida y Namayan, on the left chest and on the right side of his body and inflicting on him a mortal wound, which was the direct and immediate cause of his death thereafter.

Assisted by counsel de oficio, he was duly arraigned on 14 May 1985, and pleaded "Not Guilty" to the charge.

The prosecution evidence upon which the Trial Court based its finding of guilt beyond reasonable doubt, rests primarily on two eyewitnesses' testimonies, summarized as follows: On 17 March 1985 at about 6:10 o'clock in the evening, Antonio Comen, Alfredo Sarote, and Edgardo Simbre were drinking in the backyard of a house owned by Antonio Comen's mother, located at No. 1517-B (Interior) Pedro Gil Street, Paco Manila. Although it was dark, the backyard was illuminated by light coming from the Comen house as well as from the house of Pacita Ventura, mother of the accused-appellant, which was only three (3) meters away.

At 7 o'clock that same evening, accused-appellant Francisco C. Ventura who was apparently drunk, arrived at the backyard where the trio was drinking. Accused-appellant asked Simbre if he was "Totoy", and at the same instance boxed Simbre on the right side of the latter's face. Simbre did not put up a fight, while Comen and Sarote pacified the attacker, advising him thus: "That is enough, Pare." Accused-appellant was prevailed upon, left the scene, and went to the house of his mother, Pacita.

Two minutes later, the victim, Melvin Navida, alias Ben Ulo, arrived. He was known by the trio, since he used to reside in the area, but he moved to Bataan where he settled down. This was one of the rare times he had come to Manila. Navida was looking for a mahjong table, but he did not find one. Seeing Simbre seated on a "papag" (bamboo bench), Navide seated himself beside Simbre, who was the brother of his "compadre". The two talked. Navide had been in the backyard for only about one (1) minute, when accused-appellant returned, his hand covered by a white towel, which as it turned out later on, concealed a knife. There, and then, accused-appellant suddenly pulled out a kitchen knife and thrust it into Navida, stabbing the latter twice: once on the left part of the

chest, hitting the heart, and thence on the right side of the body.

At the time of the attack, the victim was seated beside Simbre on the “papag”. Comen was about one-and-a-half meters away from the victim. Accused-appellant had stood in front of Simbre. Comen, at first, thought accused-appellant had merely boxed Navide, but after the first stab, he realized what was happening.

After stabbing his victim twice, the assailant ran to his mother’s house. The victim did not die at once. He was able to run to a house three (3) meters away. Comen reported the stabbing incident to the Barangay headquarters. Three (3) Barangay Tanods, together with Sarote and Simbre, were able to bring the victim to the Emergency Room of the Philippine General Hospital, but the latter expired 30 minutes later.

Upon being investigated at the Police Headquarters, Comen and Simbre alleged that although accused-appellant and the victim knew each other, they could not posit any motive for the stabbing of the latter by the former.

Meanwhile, Edgardo Simbre lodged a complaint against herein accused-appellant for injuries he sustained (as evidenced by a medical certificate issued by a physician who examined him at the Philippine General Hospital), after the latter had boxed him earlier that night, in the Comen backyard.

The accused-appellant, the sole witness for the defense, denied knowledge of the fatal incident, his version being that: he was employed as painter at the San Miguel Corporation’s branch office near the Del Pan Bridge. On 17 March 1985, he left work at 5 o’clock in the afternoon, and proceeded to the house located at No. 1511-D Fabie Street, Paco Manila. It was where accused-appellant, together with his mother, sister, and brother, lived. As he was very tired, and considering also that he had work the next day, accused-appellant decided against leaving the house anymore, and instead watched television that night.

Early the following morning, as accused-appellant was preparing to leave for work, two policemen went to their residence, looking for one Danilo Ventura. Accused-appellant’s sister, who had allowed them into the house, told the men that although the house was the Ventura residence, nobody by the name of Danilo Ventura, lived there. However, the two policemen suddenly pounced on accused-appellant. He was handcuffed and brought to a waiting police car. His family was unable to get the names of the policemen who took him away. Accused-appellant was taken to a house by the cemetery. There he was boxed and physically punished, to force him to admit to having killed Melvin Navida, whom he did not even know at all. At around 4 o’clock in the afternoon of that same day, he was taken to the Headquarters of the Western Police District. As they entered, he saw two men talking to the police investigator. He did not know the two men. Accused-appellant was placed inside a detention cell. He saw the two men and the police investigator approach the cell, and he heard the latter tell the duo: “Iyan ang pumatay. Sige, ituro ninyo at suntukin ninyo.” One of the two men, whom he came to know later was Antonio Comen, boxed him (the victim) on the right side of his face. He reiterated his denial of having killed anyone. He was even more puzzled by how these two men, whom he had never met before, could point to him as the killer of a person whom he also did not know.

Continuing, accused-appellant maintains that no investigation was conducted. He was released eight (8) days after being detained, and only after he had signed documents already prepared. At the time he affixed his signature, he was not assisted by counsel. Accused-appellant also testified that one Sgt. Martinez told him that if he had P4,000.00, the crime charged could be changed from Murder to Homicide. He responded to the policeman by reiterating his avowal of innocence.

The accused-appellant contends that the Trial Court judgment is flawed in that 1) the statement given by him during the investigation is inadmissible because he was not assisted by counsel; 2) he cannot be convicted of Murder because the qualifying circumstance of treachery was not proved and 3) he is entitled to the mitigating

circumstance of intoxication.

The accused-appellant particularly objects to the statement that he “verbally admitted having stabbed the aforementioned victim,” contained in item No. 41 of the Booking And Information Sheet (Exh. C), which we quote:

“41. FACTS KNOWN TO ARRESTED OFFICERS/CIRCUMSTANCES OF ARREST:

“Herein accused was booked and arrested for the aforecited offense wherein the victim is MELVIN NAVIDA y NAMAYAN, 33 years old, married, native of Kalibu, Aklan, and last resided at No. 1517 Concordia St., Paco, Manila (Deceased), which was committed as follows:

“That on or about 7:30 p.m., March 17, 1985, in front of Hse #1571-D Pedro Gil, Paco, Manila, herein accused with intent to kill, treacherously stabbed the aforementioned victim, with the use of a kitchen knife (not recovered), and as a consequence of which said victim sustained stab wounds on the left chest and on the right arm that caused his death at the PGH, some few minutes after arriving thereat.

“When investigated, accused after having been apprised of his Constitutional Rights verbally admitted having stabbed the aforementioned victim but claimed self defense.

“Accused was positively identified by 3 eyewitnesses to the incident as the very same person they saw treacherously stabbed (sic) the aforementioned victim.

(SGD) FRANCISCO VENTURA

(Signature of Person Arrested)

(Attesting Nos. 1-31, 42)

“(SGD) PFC. EMMANUEL P. FLORES

(Signature of Arresting Officer)

(Attesting Nos. 1,32-42)”

(Original Record, page 150; emphasis ours).

It is clear from the very text itself that it is the arresting officer who attests to the narration of facts therein and not the accused-appellant. As Policeman First Class Emmanuel P. Flores, of the Western Police District, testified:

“A. I would like to clarify that the signature of the accused in the Booking Sheet and Arrest Report only confirms the matters related to his personal circumstances, but not on the other facts contained therein, sir” (TSN, January 27, 1986, page 17).

The same policeman declared that the accused-appellant refused to give a written statement (ibid.). In fact, the testimony of the accused-appellant is to the effect that although he was forced to admit the killing of Navida, he refused to do so (TSN, January 4, 1989, pages 7 and 9).

The records likewise disclose that the conviction of the accused-appellant is not based on any statement he might have given to the police authorities while under investigation but mainly on the testimonies of two (2) eyewitnesses. As the Trial Court categorically observed and found:

“When Edgardo Simbre and Antonio Comen testified before the Court, they unerringly identified and pointed to the Accused as the assailant of Melvin Navida.

“There is no shred of competent evidence in the record to prove ill or devious motive on the part of Antonio

Comen and Edgardo Simbre to prevaricate and concoct the charge against the Accused and/or to tergiversate their testimony to convict the Accused. Absent any such ill or pernicious motive, the Court must accord credence and full evidentiary weight to the testimony of the two (2) witnesses of the Prosecution.” (RTC Decision, page 10).

Treachery was evident in the manner that accused-appellant carried out the attack. Merely a minute had elapsed from the time the deceased Melvin Navida had arrived and sat beside Edgardo Simbre with whom he was conversing, when the accused-appellant, who came from his mother’s house which was three (3) meters away, appeared and without, saying a word, stabbed Navida on the left breast and on the right side of the body (TSN, July 8, 1985, page 11; TSN, August 26, 1985, pages 26 and 29). The place where the incident occurred was quite dark (TSN, July 8, 1985, page 8). The accused-appellant concealed the weapon in a towel such that the persons present saw it only after he had used it on Navida (TSN, August 26, 1985, pages 29 and 30). In fact, witness Antonio Comen testified that he first thought that the accused had merely boxed the victim only to realize later that the victim had been actually stabbed (TSN, July 8, 1985, page 5).

The attack was sudden and the deceased absolutely unprepared to put up a defense. The latter was an unsuspecting victim, since the accused-appellant testified that he did not know Navida (TSN, January 4, 1989, page 14). Neither was the victim present when the accused-appellant boxed Edgardo Simbre. He was completely unaware of this prior confrontation.

In *People v. Tajon*, G.R. No. L-47067, 17 April, 1984, 128 SCRA 656, with a similar factual milieu, the Court ruled:

“The crime committed by appellant Tajon is murder, qualified by treachery as alleged in the information. There was treachery because appellant made a deliberate surprise and unexpected assault on Exequiel Lucero. When appellant emerged from the dark, rushed in front of his victim, suddenly grabbed his collar and shot his forehead, left breast and left arm in rapid succession, Lucero was completely unaware of what would happen to him. Stated differently, the victim was caught flat-footed and was not in a position to put up a defense against the unforeseen assault upon him. The fact that the attack was frontal does not negate the presence of *alevosia* considering that the victim was shot in a defenseless situation.” (page 663)

Intoxication or drunkenness is mitigating if not habitual nor intentional, and it must be indubitably proved (Art. 15, Revised Penal Code; *People v. Camano*, 115 SCRA 6588 [1982]). Accused-appellant is not entitled to the mitigating circumstance of intoxication merely on the declaration of the prosecution witness that appellant was drunk (Exh. D, Original Record, page 151). Accused-appellant must prove that such intoxication is not habitual nor intentional. This he failed to do, for the reason that the accused-appellant’s defense was that of alibi.

In light of the circumstances of the case at bar, we hold that the guilt of the accused-appellant for the crime of Murder has been established beyond reasonable doubt.

WHEREFORE, the judgment appealed from is **AFFIRMED** with the modification that the amount of indemnification is increased to P50,000.00 following our recent pronouncements.

Costs against accused-appellant, Francisco C. Ventura.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Judge Romeo J. Callejo, presiding.

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