

MARK BAYQUEN, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 93851. March 06, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Wilfredo Boco and Mark Bayquen were charged before the Regional Trial Court of Baguio City, Branch VI for the crime of Homicide defined and penalized under Art. 249 of the Revised Penal Code in an information filed by Jose P. Basco, Assistant City Fiscal as follows:

“That on or about the 25th of day of July, 1984, in the city of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with evident premeditation, being then armed with gun and a bladed weapon, did then and there wilfully, unlawfully, and feloniously attack, assault, shot and hack or wound TEOFILO ESTEPA, thereby inflicting upon him cardio respiratory failure secondary to massive hemorrhage and gunshot wound injuring the heart, liver and lung, and as a result thereof the said Teofilo Estepa died thereafter.

“All contrary to law, with the qualifying circumstance of evident premeditation.” (p. 95, Rollo)

Boco and Bayquen both pleaded “not guilty” upon arraignment. After trial, the court rendered its decision on December 15, 1989, the dispositive portion of which reads as follows:

“WHEREFORE, in view of all the foregoing, the Court finds accused Mark Bayquen and Wilfredo Boco guilty beyond reasonable doubt of the offense of Homicide defined and penalized under Article 249, as principals by direct participation instead of Murder as charged, and sentences them, applying the Indeterminate Sentence Law, to an imprisonment of 10 years and 1 day of Prison Mayor as minimum and 17 years, 4 months and 1 day of Reclusion Temporal as Maximum; to indemnify the heirs of the victim Teofilo Estepa the amount of P168,203.00 as actual damages and P40,000.00 as moral damages, both without subsidiary imprisonment in case of insolvency and to pay the cost.” (CA decision pp. 32-33, Rollo)

From the judgment of conviction, Boco first appealed the decision assigning the following errors:

“I

“The lower court erred in finding that the testimony of Bernadette Estepa is clear, forthright, sincere, coherent, logical and intelligent thereby giving it full credence and weight.

“II

“The lower court erred in finding that the witness Bernadette Estepa has not shown any ill motive to fabricate and prejudice both accused.

“III

“The lower court erred in stating that there were no indications in Bernadette Estepa’s testimony of being evasive, vague, or ambiguous.

“IV

“The lower court erred in admitting the alleged declaration of the deceased Teofilo Estepa implicating the accused-appellant as one of his assailants.

“V

“The lower court erred in holding that the guilt of the accused-appellant was proven beyond reasonable doubt.

On the other hand, Bayquen (Petitioner) separately appealed, raising the following errors:

“I

“The trial court erred in not considering the declarations of witness Bernadette Estepa immediately subsequent to the death of her brother as part of the *res gestae*.

“II

“The trial court erred in relying and giving undue credence to the incredible testimony of Bernadette Estepa, the lone material witness that her late brother gave a dying declaration.

“III

“The trial court erred in ignoring the more credible testimonies of the accused and the witnesses for the defense.

“IV

“The trial court erred in ignoring the real and tangible object evidence that the victim interrupted a robbery in progress at their house which led to his death.

“V

“The trial court erred in not considering that the accused had not (sic) motive, to commit the offense (Appellant’s Mark Bayquen’s Brief, pp. 1-2).” (pp. 97-98, Rollo)

Two separate appellee’s briefs were filed by counsel for the people.

On May 31, 1990, the Court of Appeals, rendered its decision affirming in toto the findings of the trial court, with costs against the accused-appellants.

Boco filed a motion for reconsideration which was denied for insufficiency of form and substance, which became final and executory on November 12, 1990, (p. 153, Rollo).

Petitioner on the other hand, did not move to reconsider the decision. Instead, he filed the instant petition premised on the Court of Appeals’ alleged failure to consider/apply specific provisions of law, or applicable jurisprudence, as follows:

“(a) the application of the *res-gestae* rule;

“(b) the unwarranted and unreasonable delay in reporting the alleged ‘dying declaration’ which defies credulity;

“(c) the fact that there was object or real evidence of a robbery;

“(d) the lack of motive on the part of your petitioner and his co-accused and the failure to prove conspiracy;

“(e) the fact that the judge who rendered the decision was not the one who heard the testimony of witness Bernadette Estepa;

“(f) the credible, convincing and satisfactory defense of the accused. (Summation by Solicitor General, Comments, pp. 7-8, Petition’).” (p. 99, Rollo).

The facts of the case are narrated in the Court of Appeals’ decision as follows:

“On July 23, 1984, at around 8:00 o’clock in the evening, the victim Teofilo Estepa arrived home in his house at No. 20 Ouisumbing Street, Trancoville, Baguio City. His older sister, 22 year-old Bernadette Estepa was already home. To celebrate his birthday, Bernadette and Teofilo dined together. Teofilo then told his sister that if anyone asked for him to say that he was asleep, adding that he had nothing to do with what happened. Bernadette inquired but Teofilo merely said ‘Pinasubodac’, meaning “I was led into trouble” (p. 20, TSN, November 29, 1985). However, nobody came to see Teofilo Estepa.

“The following day, July 24, 1984, at about 6:30 p.m., Bernadette was asked by Virgie Corpuz, who was their boarder at the basement and who came up with her mother-in-law to use the phone, if Teofilo was already home. When she replied that he was still in school, Virgie Corpuz told Bernadette that earlier that afternoon Barangay Captain Albert Della and Dr. Bayquen, the father of Mark Bayquen, came to the house looking for Teofilo and leaving word that if Teofilo did not show up that same night they will pick him up on the first hour the following morning. At that juncture, Teofilo arrived. Immediately, Virgie Corpuz told him what she had just told Bernadette. Teofilo said that he had nothing to do with the destruction of the motorcycle and he will tell what really happened if he had to (pp. 21-22, TSN, November 29, 1985). At about 8:00 p.m., Teofilo asked permission from his sister to go out to look for appellant Wilfredo Boco whom he said was his companion in the motorcycle incident. He came back at about 10:00 p.m. telling that he was not able to find Boco and instructed her to wake him up at 4:00 a.m. the next day, July 25, 1984, so he could review for his examinations.

“Before 4:00 a.m. of July 25, 1984, Bernadette Estepa was awakened by a commotion outside her room as if a door was being closed (pp. 23-24, TSN, November 29, 1985; p. 3, TSN, December 17, 1985). She called out her brother’s name “Bong” but nobody answered. She noticed from the space under the door that the light on the sala was turned on so she got up and tried to open the door but could not. It was as if somebody was pulling the door knob outside. Thinking that it was only her brother, she returned to her bed and went back to sleep (p. 7, TSN, December 17, 1985). After about 5 minutes, she was awakened by the alarm clock which she previously set at 4:00. She called out Bong several times but nobody answered so she got up to wake him up per his request. She opened the door, this time without any difficulty. Since the lights in the sala and kitchen were on, she immediately noticed Bong’s room which is about 13 meters from her’s opened. She walked to the room but was surprised to see it in complete disarray. Bong’s books and beddings were scattered on the floor. She looked for him in the other, parts of the house but could not find him. As she was calling his name she heard two gunshots coming from downstairs. Immediately she went down and there she saw at the stair landing her brother, Bong, lying face down (pp. 10, 14, & 20, TSN, December 17, 1985). She lifted him up and noticed that he was bleeding. She asked him ‘why’. Bong answered in Ilocos, ‘Pinaltogandak ken sinasakdak’ (They shot and stabbed me.) Bernadette asked him who did it and he answered clearly, ‘Mark Bayquen and Boco’. (pp. 25-27, TSN, November 29, 1985). She helped him stand placing her arms around his shoulder and up to their apartment at the second floor taking about 10 to 15 steps. She leaned him on the sofa and tried to call Baguio Police Station but failed to connect. She also called Camp Allen to report the incident.

Thereafter, she went to the kitchen door and called Virgie Corpuz for some help. Minutes later Virgie Corpuz and her brother-in-law Bongbong came up. Virgie called and was able to contact the police station. Bernadette then requested Bongbong to bring the victim to the hospital. She and Bongbong helped Teofilo, who was already weak, to go downstairs. When a police jeep arrived. Immediately they assisted Teofilo to bound (sic) the jeep and they proceeded to Notre Dame Hospital. On their way, Bernadette did not tell anything to the police. It was about 20 minutes from the time Bernadette discovered her brother bleeding up to the time they reached the emergency room of the Notre Dame Hospital. An hour after, Teofilo was pronounced dead on arrival. Again Bernadette kept mum about the death of her brother but upon advise of Dra. Cabato, consented to the autopsy of the cadaver of her brother.” (CA, decision, pp. 33-34, Rollo).

Petitioner faults the appellate court for upholding the trial court’s reliance on the sole testimony of Bernadette Estepa, the deceased’s sister, who had pointed to Wilfredo Boco and Mark Bayquen as the persons who “shot and stabbed” her brother Bong Estepa, based on Bong’s dying declaration. The petitioner believes that the ante-mortem statements should have been disregarded considering that they were revealed 14 days after Bong Estepa’s death on July 24, 1984 or on August 8, 1984.

We find for petitioner.

In the recent case of *People v. Eduardo Hernandez, et al.* (G.R. Nos. 67690-91, January 21, 1992), penned by Chief Justice Andres Narvasa, the Court disregarded the dying declaration or ante-mortem statements of the deceased Buenaventura Mendoza, because the widow never divulged the same to the three police investigators and the barangay councilman who came to the victim’s house and stayed for several hours, revealing the same for the first time only when she testified at the trial. The Court therein pointed out:

“x x x. Her reason for not making the revelation earlier was, in her own words, ‘I was confused at that time; ** there were so many persons who went to our place so I was not able to tell (banggit) those things **.’ Gelacio too, appears to have kept quiet about the widow’s disclosure to him (re the victim’s identification of his assailants), and like his sister-in-law, made that disclosure public only when he testified at the trial of his brother’s supposed killers. Conduct like this is passing strange. It is unnatural. It is incredible. It makes it extremely difficult to accord any credit to the testimony of either the widow or her brother-in-law with respect to the ante-mortem statements allegedly made by the deceased seconds before he expired from his gunshot wounds. (Emphasis ours) (page 9, Decision).

In the same manner, Bernadette’s excuse in the present case for not divulging the dying declaration of her brother, Bong Estepa, was that she was afraid because she was all alone since her parents, brothers and sisters were all abroad. Strangely, however, this was not her attitude, when, in the morning of the incident, she ventured out into the dark alone at 4:00 in the morning, walked down the stairs (TSN, Nov. 29, 1985, pp. 25-26; Dec. 17, 1985, p. 22) despite the sound of two gunshots.

Nonetheless, granting her fears, We cannot understand why she still failed to go to the police authorities upon arrival from Germany of her father and her mother, brothers and sister, from the States. The physical presence of these persons would have provided her the necessary moral support and would have shielded her from feared reprisals. As pointed out by petitioner in his appeal brief:

“Take the case of the father, Teofilo Estepa, Sr., who allegedly arrived July 28, 1984, and was informed by his daughter about this so called ‘dying declaration’ on July 30, 1984. A father’s first impulse when his beloved son dies by the hand of others is to see to it that justice is done and the culprits are apprehended. Yet, he maintained a stoic silence and did not alert the police.

“This becomes more incredible when the alleged assailants (as named in this fictitious ‘dying declaration’) are just their close neighbors, one of whom resided in the same barangay while the other in the adjoining barangay.

Moreover, the accused Wilfredo Boco, the best friend of the late Bong Estepa, had been visiting the remains of his deceased companion and paying his respects during the vigil. What prevented the family from making an anguished outcry and complain to the police that the ‘killers’ of their son were roaming at large while their son was about to be buried. This is the natural reaction of a normal human being with normal emotions and feelings. Unless the Estepa family claim to be abnormal, they cannot help but react as ordinary human beings should and would given the same circumstances.

‘It has been observed that the most positive testimony of a witness may be contradicted by the fact that the testimony is contrary to common observation and experience, or the common principles by which the conduct of mankind is governed. The courts are not required to believe that which they judicially know to be incredible (People v. Beltran, 61 SCRA 246).

‘Statements made by a witness that are not only in conflict with the experience of common life and of the ordinary instincts and promptings of human nature, but are also negative of surrounding circumstances, may be, and should be disbelieved. (Champagne v. Hammey, 1 89 Mo. 709, 88 S.W. 92).’” (pp. 71--72, Rollo)

Petitioner asks instead that the statements of Bernadette Estepa, uttered immediately after the incident be given credence, since these were made spontaneously without any opportunity to fabricate or concoct any statement. Petitioner stated in his appeal brief:

“Interviewed right after the death of the brother by investigating policeman MELENCIO SANTOS of the Baguio City Police Department and asked who killed her brother, she replied that her brother could hardly talk. (T.S.N., P/Cpl. Melencio Santos, Oct. 15, 1985, p. 8).

“Interviewed that same morning by Dr. Florita Ferrer-Garcia, Officer-in-Charge of the Baguio Health Department, for purposes of giving her consent to the autopsy of her brother, she was asked who killed her brother and her answer was that a robber killed her brother without naming any names. (T.S.N., Dr. Garcia, February 28, 1985, p. 23). In fact such statement was embodied in the doctor’s post-mortem report.

“Again, interviewed by her own barangay captain, Alberto Della, who even offered her the protection of his office and even provided her with a rifle, when asked if she knew the assailants of her brother, she said ‘NO.’

“The herein accused-appellant respectfully submits that these statements must be given great weight in analyzing the whole body of evidence against the accused. Aside from Bernadette Estepa, no one was presented to corroborate her testimony. Upon her sole testimony therefore rests the entire case.

“The utterances of the witness Bernadette Estepa to the policeman, to the doctor, and to her barangay captain were spontaneous declarations, without premeditation on her part. She was still suffering under the strain of a startling occurrence, the stimuli of which did not allow her any opportunity to fabricate or dissimulate. It is the respectful submission of herein accused-appellant that such statements and utterances under the obtaining conditions fall under the res gestae rule, that is, they are part of the res gestae. (Sec. 36, Rule 130, Rules of Court).” (pp. 61-62, Rollo)

As between the spontaneous statements of Bernadette Estepa, therefore, and those which she gave before the NBI two weeks after her brother’s death, it is clear that the former statements should be given weight and credence.

Moreover, the autopsy findings (Exh. “B”) states:

“X X X

“4. Presence of a gunshot wound 1/8” in diameter; edges very black located below and medial to the left nipple;

a) penetrating the chest wall between the 6th and 7th ribs, 2 inches from the midclavicular line,

- b) perforating the tip of the right ventricle
- c) penetrating the left side of the diaphragm
- d) perforating the liver
- e) penetrating the right side of the diaphragm
- f) perforating the lower lobe of the right lung
- g) bullet lodged at the level of the right floating rib 4 inches from the right posterior axillary line, Bullet is colored lead and copper, with a diameter at its base of .38 in and a length of 6/8 in. (Bullet given to BCPD).

“X X X.”

Dra. Florita Ferrer-Garcia, a physician of the Baguio General Hospital, who conducted the autopsy, testified as follows:

“Q In No. 4 of your post-mortem report, it is stated ‘presence of a gunshot wound 1/8” in diameter.’ [I]s this the wound that caused the ultimate death of the victim in this case Teofilo Estepa?

“A Yes, sir.

“Q You also mentioned ...

“COURT:

“Q Will you please explain why that wound according to you was the cause of the death of the victim?

“A Because that wound has perforated vital organs which when injured is fatal.

“X X X

“Q In letter ‘h’ of this report Doctora which is marked a Exhibit ‘B’ there is mentioned of 2 slits 3/8” in length on the skin over where the bullet is lodged. Would you please describe these slits and will you give us an opinion what caused these slits?

“A This slit is just a linear opening measuring 3/8 inch in length, over the skin. And underneath it is the bullet. The probable reason of the slit is the foreign object underneath the skin which has caused pressure on the skin but was not able to get out.

“Q So, could we assume that these slits were caused by the impact of the bullet going in?

“A Yes, sir.” (T.S.N., February 28, 1985, pp. 9-10)

Contrary, therefore to Bong Estepa’s dying declaration that he was “shot and stabbed”, Bong Estepa died of a single gunshot wound. He was not stabbed.

In giving credence to the dying declaration, the prosecution cites the damage done to petitioner’s motorcycle by both Bong Estepa and Wilfredo Boco (petitioner’s co-accused) as petitioner’s motive for killing Estepa. Although living in adjoining barangays, however, petitioner and Estepa never got to know each other. It was only because of the incident on July 23, 1984 when petitioner found his motorcycle lying damaged on the street that petitioner got acquainted with Estepa.

Petitioner had shown himself to be law-abiding in seeking retribution for his damaged motorcycle, by filing the corresponding complaint. Petitioner points out:

“x x x. He came to know that Wilfredo Boco and Teofilo Estepa, who he did not know personally, took his motorcycle, probably as a prank. This matter was reported to the police where a complaint for Qualified Theft was filed (Exhibits ‘9-c’, ‘9-c-1’, ‘9-c-2’, ‘9-c-3,’ ‘10’, ‘11’, ‘11-a’, ‘11-b’, ‘11-c’, ‘12’ ‘12-b’, ‘12-c’ and ‘12-d’).

“A complaint for purposes of amicable settlement under the provisions of the Katarungang Pambarangay was filed with the barangays of the respondents concerned on July 24, 1990 (Exhibits ‘4’, ‘4-a’, ‘4-b’, ‘5’, ‘5-a’, ‘5-b’, ‘6’, ‘6-a’, ‘6-b’, ‘7’, ‘8’, ‘8-a’, ‘8-b’, and ‘8-b-1’). This certainly indicates that your petitioner was law-abiding and was willing to go through lawful processes in settling disputes.

“The complaint against the late Teofilo Estepa could not proceed because of his untimely death. However, Barangay Captain Thomas Chamos, who testified, was able to work out an agreement entered into on August 4, 1984, whereby Boco would pay commensurate damages to the motorcycle Exhibits ‘4’, ‘4-a’, ‘4-b’, ‘5’, ‘5-a’, ‘5-b’, ‘6’, ‘6-a’ ‘6-b’, ‘7’, ‘8’, ‘8-a’, ‘8-b’, and ‘8-b-1’). x x x.” (p. 193, Rollo)

In sum, the prosecution’s case rests entirely upon the identification of petitioner and Wilfredo Boco made to Bernadette Estepa by the deceased Bong Estepa. As We have pointed out earlier, however, considering the belated disclosure, We are not inclined to give weight to the alleged dying declarations of Bong Estepa. As the Chief Justice in the Hernandez case (supra), pointed out: “The ante-mortem statements being thus relegated to limbo, x x x very little remains by way of evidence upon which to rest a verdict of conviction” against petitioner.

ACCORDINGLY, the judgment of conviction rendered against petitioner on December 15, 1989 is REVERSED and SET ASIDE, and petitioner is, on reasonable doubt, ACQUITTED of the crime charged, with costs de oficio.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, and Grino-Aquino, JJ., concur.

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