PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS., DOMINGO LACHICA,

G.R. No. 94432. October 12, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is an appeal from the Decision[2] dated July 11, 1990 of the Regional Trial Court of Zambales, Branch 71, in Criminal Case No. RTC-457-I, convicting appellant Domingo Lachica of the crime of murder, and sentencing him thus:

> "WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of Murder, qualified by evident-premiditation (sic) and attended by the generic aggravating circumstance of Treachery and Use of a Motor Vehicle, the Court hereby sentences the accused Domingo Lachica to an imprisonment of RECLUSION PERPETUA and to jointly and severally, with accused Januario dela Cruz, who was convicted by this Court, indemnify the heirs of Rodolfo Pamoleras, Jr., @ 'Jerry' Pamoleras in the amount of P30,000.00, Philippine Currency, and to pay actual damages in the amount of P6,000.00, Philippine Currency, with costs.
>
> SO ORDERED."[3]

Filed on October 24, 1987, by Assistant Provincial Fiscal Benjamin A. Fadera, the Information indicting the appellant, alleges:

> "That on or about the 3rd day of August, 1987 at around 10:00 o'clock in the evening, at Brgy. Beddeng, in the municipality of San Narciso, province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the herein named accused, conspiring, confederating and mutually helping with two (2) unidentified persons herein designated as 'John Doe' and 'Peter Doe' with intent to kill, and armed with a knife, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Rodolfo Pamoleras, Jr., thereby inflicting upon him the following injuries, to wit:
>
> ' - Lacerated wound proximal 3rd arm posterior aspect (L)
>
> - Incised wound palmar surface (L)
>
> - Stab wound 2 cm length neck lateral (R)
>
> - Stab wound 2 cm length medical scapular (R)
>
> - Stab wound 2 cm length vertebral area posterior
>
> - Stab wound 2 cm length vertebral area posterior
>
> - Lacerated wound 3 cm knee (L)'

which injuries caused the instantaneous death of said Rodolfo Pamoleras, Jr.

CONTRARY TO LAW."[4]

With the accused entering a negative plea[5] upon arraignment on December 13, 1988, trial ensued.

As summarized by the Solicitor General, the version sued upon by the People, runs as follows:

> "At around 10:00 o'clock in the evening on August 3, 1987, Rey Pascasio, a tricycle driver, came from the town proper of San Antonio, Zambales and after discharging his passenger at the 'crossing' where there are rows of night clubs located at the intersection of the National Highway and the road leading to the U.S. Naval Facility at San Miguel, San Antonio, Zambales, he was called by Januario dela Cruz, a relative from across the road and told him that they would 'throw' something. Rey Pascasio acceded and followed Januario dela Cruz across the street near the gate of the Guerrero Compound where the three (3) companions of Januario dela Cruz were. Before boarding his tricycle, Januario dela Cruz introduced the deceased Rodolfo Pamoleras, Jr. and accused Domingo Lachica to Rey Pascasio. Pascasio's passengers boarded his tricycle with Januario dela Cruz riding tandem with Pascasio, while the other three (3) boarded the sidecar of the tricycle. Rodolfo Pamoleras, Jr. was seated near the sidecar entrance while Domingo Lachica was seated near the driver facing the entrance of the sidecar, and Ferdie Punzalan merely squatted on the floor, infront of Pamoleras (pp. 4-10, tsn, Jan. 31, 1989). Thereafter, Reynaldo Pascasio was directed by his passengers to go to Olongapo but because his tricycle was facing the opposite direction towards the north going to the town of San Narciso, Zambales, Pascasio was told to proceed. So he proceeded towards San Narciso, Zambales. On the way, before reaching the waiting shed at Mabangcal, San Narciso, Zambales, Pascasio slowed down because there was a white car, following them. And as his tricycle was running on the shoulder of the road, he heard somebody inside the tricycle cry out 'aray' and felt warm blood spurt from inside the sidecar of the tricycle landing at the back of his right palm. He then stopped the tricycle and Ferdie Punzalan and Domingo Lachica brought out Rodolfo Pamoleras, Jr. (Jerry Pamoleras) from the sidecar and all of them crossed the road. Punzalan and Lachica beat up Rodolfo ('Jerry') Pamoleras, Jr. Thereafter, they stabbed Rodolfo ('Jerry') Pamoleras, Jr., while Januario dela Cruz merely watched the whole incident, telling his two (2) companion not to shoot but only to stab the victim (p. 11 to 16, tsn, Jan. 31, 1989)
>
> After beating and stabbing Rodolfo Pamoleras, Jr. (Jerry Pamoleras), Domingo Lachica and Ferdie Punzalan again boarded the sidecar leaving Rodolfo Pamoleras, Jr. behind near the fence of the school. Januario dela Cruz directed Rey Pascasio immediately to go to his (dela Cruz') house at West Dirita, east of the U.S. Naval Communications Station at San Miguel, San Antonio, Zambales (p. 17, tsn, ibid).
>
> To avoid passing a checkpoint on the road going to the U.S. Naval Communications Station, because the tricycle was full of blood, Januario dela Cruz directed Rey Pascasio to pass through the road behind the Abille's Mini Mart leading to the Admiral Village, then to road leading to the U.S. Naval Communications Station (pp. 18-20, supra).
>
> Upon their arrival at the house (of) Januario dela Cruz, the latter forthwith washed away the blood in the tricycle without anybody instructing him to do so, while Domingo Lachica and Ferdie Punzalan went behind the house of Januario dela Cruz, where the wound of Punzalan on the right arm, which was inflicted accidentally when both Lachica and Punzalan were stabbing Pamoleras simultaneously, was treated by a cousin of Januario dela Cruz (p. 23, tsn, Feb, 21, 1989). After washing the tricycle, Januario dela Cruz paid Rey Pascasio P7.00 as their fare. Thereafter, Rey Pascasio went home. Because he was threatened by Januario dela Cruz' relatives, he kept silent and he did not report the incident to the police (p.24, tsn, ibid).
>
> The following morning at 6:00 o'clock Barangay Captain Ricardo Abinsay of Barangay Beddeng, San Narciso, Zambales reported to Sgt. Manuel Tejada, Station Commander of San Narciso, Zambales the presence of a dead person of infront of the Beddeng-Mabancal Elementary School, Pat. Arsenio Agawin and Pat. Salvador Nagma were dispatched to the place.
>
> At the scene, they saw a dead person lying on his stomach on the ground at the shoulder of the road about a

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meter away from the fence of the Beddeng-Mabancal Elementary School. The body had a red sleeveless undershirt (sando) and white short pants. There were bloodstains on the red undershirt. At the same place, the two (2) policeman came upon Lt. Amado Farinas who gave them a wallet containing an Identification Card with the name "Jerry Reyes" on it. Thereafter, they brought the cadaver to the Municipal Hall.

Later, on the same date, a member of the police force of San Narciso, Zambales, fetched Dr. Jaime Braga, the Rural Health Officer of San Narciso, Zambales, who arrived and examined the cadaver there at the Municipal hall of San Narciso, Zambales. Dr. Braga found the following injuries:

' - Lacerated wound proximal 3rd arm posterior aspect (L)

- Incised wound palmar surface (L)

- Stab wound 2 cm length neck lateral (R)

- Stab wound 2 cm length medical scapular (R)

- Stab wound 2 cm length vertebral area posterior

- Stab wound 2 cm length vertebral area posterior

- Lacerated wound 3 cm knee (L)'

Of the wounds sustained by the person found dead identified through his ID card as Jerry Reyes, but later identified by his father as Rodolfo Pamoleras, Jr., the wound on the right neck was the fatal wound, as this involves the blood vessels in the neck.

In the afternoon of August 6, 1987, Rodolfo Pamoleras, Sr., who lives in Olongapo City learned that the policeman of San Narciso, Zambales had discovered and recovered the cadaver of his son, Rodolfo Pamoleras, Jr., on August 4, 1987, whom he last saw on August 3, 1987 at his house at 31-4th St., Olongapo City. Upon learning of the discovery of his son's cadaver, Rodolfo Pamoleras and his wife went to the police-station of San Narciso, Zambales to verify the report, but he was informed that the cadaver had already been buried at the San Narciso Municipal Cemetery. So, they told the Station Commander that they would return the next day to have the body exhumed.

For the examination of the cadaver of his son, Rodolfo Pamoleras, Sr. spent P6,000.00. He also paid the Funeral Parlor for the burial, the receipt of which was submitted during the trial of Januario dela Cruz.

About four days after the incident, while Reynaldo Pacasio was plying his route, one Chito Fernandez a policeman of San Antonio, Zambales picked him up and he was investigated and his statement was taken (Exhibit 'A') [p. 25, tsn, ibid].

In an Information dated October 24, 1987, Januario dele Cruz, together with 'John Doe' and 'Peter Doe' was charged with the crime of Murder. Januario dela Cruz was tried, and in the course of the trial, the identity of 'John Doe', as Domingo Lachica and 'Peter Doe', as Ferdie Punzalan, surfaced. Januario dela Cruz was subsequently found guilty.

Appellant was subsequently apprehended, tried, and was found guilty of the crime of Murder. Ferdie Punzalan has remained at large."[6]

The defense placed reliance on alibi. Appellant theorized that from August 1986 to May 17, 1988, he was in Panitan, Capiz, his hometown, and never left the place until May 17, 1988, when he sailed for Luzon. To support his theory, appellant presented documents purportedly issued in Capiz, to wit: two residence certificates dated October 19, 1987 (Exhibit "1") and August 29, 1986 respectively, (Exhibit "2"); a duplicate copy of a passenger

ticket on a ship bound for Manila, dated May 17, 1988 (Exhibit “3”); a clearance from the Philippine Army in connection with his application[7] as a trainee, dated September 24, 1986 (Exhibit “4”); Barangay Clearance from Poblacion Ilaya, Panitan, Capiz dated September 5, 1986 (Exhibit “5”); Police Clearance issued on September 22, 1986 (Exhibit “7”); Clearance from the Regional Trial Court of Roxas City dated September 23, 1986 (Exhibit “8”); a Voters Affidavit dated November 28, 1987 (Exhibit “9”); and Special Delivery Air Mail Envelopes postmarked: October 2, 1986 (Exhibit “11”), October 30, 1987 (Exhibit “12”), and November 25, 1987 (Exhibit “13”).[8]

On July 11, 1990, the trial court came out with its judgment of conviction.

Dissatisfied therewith appellant found his way to this Court via this appeal assigning errors, that:

I

THE TRIAL COURT ERRED IN CIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF REY PASCASIO, DESPITE INCONSISTENCIES ON MATERIAL POINTS.

II

THE TRIAL COURT ERRED IN FAILING TO APPRECIATE THE EVIDENCE PRESENTED BY LACHICA THAT CLEARLY ESTABLISHED HIS CONTINUED STAY IN CAPIZ, THEREBY SHOWING THAT ON THE DATE OF THE COMMISSION OF THE CRIME, LACHICA WAS NOT IN LUZON.

III

THE TRIAL COURT ERRED IN BASING ITS JUDGMENT SIMPLY ON PROBABILITIES, TOTALLY DISREGARDING THE CLEAR AND CONVINCING EVIDENCE SUBMITTED BY LACHICA THAT ESTABLISHED THAT HE WAS NOT IN LUZON AT THE TIME THE ALLEGED CRIME WAS COMMITTED.

Settled is the rule that the findings by the lower court on the credibility of witnesses are accorded great weight and respect since it had the singular opportunity to observe the demeanor of the witnesses when they testified during the trial.[9] This rule stands absent any showing that certain facts of note and substance have been overlooked, misinterpreted or misapplied below which, if considered, would affect the outcome of the case.[10]

After a thorough review and examination of the evidence on hand, no ground or basis is perceived for disregarding the testimony of eyewitness Reynaldo Pascasio. Verily, his testimony appears candid and straight forward, and what is more, no improper motive on his part that would impel him to falsely testify, had been shown.[11]

Appellant berates and assails the narration of Reynaldo Pascasio, theorizing that the passiveness of the latter all through out the time the alleged crime was being perpetrated, let alone his failure to report the incident to the authorities, militate against human experience.

The contention is untenable. Witnessing a crime is an unusual experience which elicits different reactions from witnesses. Therefor, no clear cut standard form of behavior can be drawn. That Pascasio did not help the victim or report the incident to the police is of no moment. It does not make his reaction less normal under the attendant circumstances.[12] Thus, his reluctance on getting involved in the case, on the face of the threat on his life by the relatives of the culprits,[13] should not detract from the faith and credit his testimony deserves.[14]

Anent the defense of alibi theorized upon by the appellant, the Court believes, and so holds, that the same cannot

prevail over appellant's positive identification by Reynaldo Pascasio as one of the perpetrators of the crime.[15] Pascasio could not have possibly mistaken the identity of the appellant because the latter was introduced to him by Januario dela Cruz before they boarded his (Pascasio's) tricycle in a well-lighted area at the "crossing". Undoubtedly, Reynaldo Pascasio had all the opportunity to observe the physical appearance of the appellant from the time he was introduced to him, to the time the appellant and his companions left the dead body of the victim on the roadside, and up to the time they reached the house of Januario dela Cruz where he was threatened to be killed if he would reveal the incident to the authorities.

For the defense of alibi to prosper, the appellant must prove that he was not at the locus delicti when the offense was committed and that it was physically impossible for him to be at the scene of the crime at the proximate time of its commission.[16] In the case at bar, appellant utterly failed to satisfy these requirements. As aptly observed by the trial court, none of the documents[17] presented by the appellant coincides with the date or even the month when the incident occurred on August 3, 1987.[18] Furthermore, assuming that accused really left for Panitan, Capiz in August of 1986, it was not improbable for him to return to his residence in Olongapo City on or before August 3, 1987, and be at the precise time and place of the commission of the crime. As admitted by the appellant, from Capiz, it takes only one (1) day to reach Manila by ship. Manila to Olongapo City can be negotiated by big or mini busses in approximately two to three hours; and from Olongapo City where he resides, to the "crossing" at San Miguel, San Antonio, Zambales, the travel time would only be more or less forty (40) minutes. Therefrom, the locus delicti is only five (5) minute-ride-away by bus, or at most, ten (10) minutes by tricycle.[19] Indeed, with all the available means of transportation, travelling from Capiz to San Miguel, San Antonio, Zambales, could surely be done with facility.

The Court discerns no ground for disregarding the finding by the trial court that there was conspiracy among the appellant and his companions. The act of Junuario dela Cruz of hiring a tricycle on the pretext of needing to throw something; their strategic seating positions inside the tricycle, depriving the deceased an opportunity to free himself; their respective acts of stabbing the deceased, and their washing the blood off the tricycle all evinced a unity of action and common design to kill the victim. It is not necessary that there be evidence of a previous plan or agreement to embark upon the assault. It is sufficient that their actions indicate a common intent such that the act of one is the act of all.[20]

Likewise, the trial court erred not in ruling that treachery attended the commission of the crime, because obviously, the deceased had no inkling that he would be killed that fateful night. There was no force employed on him when he boarded the tricycle. Neither was there a heated argument with any of the culprits. In fact, they appeared to be in a jubilant mood even as they were singing "Tayo na sa Heaven".[21] Evidently, from all appearances the deceased was lured into going with the assailants who suddenly stabbed him inside the moving tricycle, giving the latter no opportunity to retaliate or defend himself from the means or method consciously adopted by the felons in taking his life.[22]

As to the "use of motor vehicle", from the evidence it can be gleaned unerringly that the appellant and his companions deliberately availed themselves of a tricycle to facilitate the commission of the offense, giving them cover in the course thereof.

But the qualifying circumstance of evident premeditation cannot be appreciated here since there was no proof as to how and when the plan to kill the deceased was hatched or what time had passed before the killing was carried out.[23] Be that as it may, the qualifying circumstance of treachery suffices to qualify the offense to murder. The trial court erred in appreciating the said circumstance as a generic aggravating circumstance. Having been duly alleged in the Information and proven beyond reasonable doubt by the prosecution, treachery should be treated as a qualifying circumstance. It bears stressing that in criminal cases, an appeal opens the entire case for review,[24]

giving the appellate court an opportunity to weigh and evaluate, once more, the surrounding circumstances affecting the criminal liability of the appellant.

As regards the imposable civil liability, the award of P6,000.00 for funeral expenses should be reduced to P3,000.00, which is the only amount covered by a receipt (Exhibit "C").[25] The balance of P3,000.00 was merely based on the approximation by the trial court of the amount of funeral expenses incurred by the heirs of the deceased. Such award cannot be made on such basis alone. There must be competent proof that actual or compensatory damages have been suffered and evidence of the actual amount thereof.[26] However, following prevailing jurisprudence, the indemnity ex delicto must be raised to P50,000.00.[27]

WHEREFORE, the appealed Decision is hereby AFFIRMED with the modification that the appellant is ordered to pay the heirs of the deceased P3,000.00, as actual damages, and P50,000.00, as indemnity ex delicto. Costs against the appellant.

SO ORDERED.

Melo, (Acting Chief Justice), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] His co-accused, Januario dele Cruz was convicted by the Supreme Court in G.R. No. 84714 on October 5, 1990 [190 SCRA 328], while Ferdinand Punzalan is still at large.

[2] Penned by Judge Santiago C. Maliwanag.

[3] Decision, Rollo, p. 37.

[4] Original Records (O.R.), p. 1.

[5] O.R., p. 9.

[6] Appellant's Brief, Rollo, pp. 117-125.

[7] This was never filed as shown by the absence of acknowledgment receipt by the military authorities on the copy of the application.

[8] Decision, Rollo, p. 29.

[9] People vs. Camat, 256 SCRA 52, p. 64; citing: People vs. San Gabriel, 235 SCRA 80; People vs. Bongadillo, 234 SCRA 233; People vs. Ornoza, 151 SCRA 495.

[10] People vs. Enriquez, 281 SCRA 103, p. 114, citing: People vs. Gabris, 258 SCRA 663.

[11] People vs. Camat supra, citing: People vs. Calope, 229 SCRA 413; People vs. Belibet, 199 SCRA 587.

[12] People vs. Rubio, 257 SCRA 528, p. 534; citing: People vs. Radomes, 141 SCRA 458 and People vs. Amoncio, 122 SCRA 686.

[13] T.s.n., p. 24, Direct examination of Reynaldo Pascasio, January 31, 1989.

[14] People vs. Bustarde, 182 SCRA 554, p. 558.

[15] People vs. Abrenica, 252 SCRA 54, p. 62, citing: People vs. Cabuang, 217 SCRA 675.

[16] People vs. Batulan, 253 SCRA 52, p. 64; citing: People vs. Kipte, 42 SCRA 198; People vs. Macayan, et al., 126 SCRA 322; People vs. Saguban, 231 SCRA 744; People vs. Cabresos, 244 SCRA 362.

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[17] Two residence certificates dated October 19, 1987 (Exhibit “1”) and August 29, 1986 (Exhibit “2”); a duplicate copy of a ticket on the ship for Manila dated May 17, 1988 (Exhibit “3”); a clearance from the Philippine Army in connection with his application as a trainee dated September 24, 1986 (Exhibit “4”); Barangay Clearance from Poblacion Ilaya, Panitan, Capiz dated September 5, 1986 (Exhibit “5”); Police Clearance issued on September 22, 1986 (Exhibit “7”); Clearance from the Regional Trial Court of Roxas City dated September 23, 1986 (Exhibit “8”); a Voters Affidavit dated November 28, 1987 (Exhibit “9”); and Special Delivery Air Mail Envelopes postmarked: October 2, 1986 (Exhibit “11”), October 30, 1987 (Exhibit “12”), and November 25, 1987 (Exhibit “13”).

[18] Decision, Rollo, pp. 32-33.

[19] Id., p. 32.

[20] People vs. Gupo, 190 SCRA 7, p. 18; citing: People vs. Montealegre, 161 SCRA 700.

[21] T.s.n., pp. 41 and 43, Cross-examination of Reynaldo Pascasio, February 21, 1989.

[22] Sub-paragraph 16, Article 14, of the Revised Penal Code.

[23] People vs. Dela Cruz, 190 SCRA 328, p.336; citing: People vs. Balansi, G.R. No. 77284, July 19, 1990.

[24] Obosa vs. Court of Appeals, 266 SCRA 281, p. 301; citing: Quemuel vs. Court of Appeals, 130 Phil. 33, 35.

[25] Decision, Rollo, p. 36.

[26] People vs. Balisoro, G.R. No. 124980, May 12, 1999; citing: Del Rosario vs. Court of Appeals, 243 SCRA 600.

[27] People vs. Balisoro, supra.

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