

PROTACIO T. BACANI, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 97032. July 05, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Protacio T. Bacani was charged with two (2) separate offenses: homicide for allegedly killing one Abetalib Usodan; and frustrated homicide said to have been committed against Khalik Menor. The information for homicide read as follows:

"That on or about July 12, 1983, in the City of Manila, Philippines, the said accused, conspiring and confederating together with several others whose true names, identities and present whereabouts are still unknown and helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and use personal violence upon one ABETALIB B. USODAN, by then and there stabbing him on the chest with a bladed weapon, thereby inflicting upon the latter mortal stab wound which was the direct and immediate cause of his death immediately thereafter.

Contrary to law."[1]

The charge of frustrated homicide stated:

"That on or about July 12, 1983, in the City of Manila, Philippines, the said accused, conspiring and confederating together with several others whose true names, identities and present whereabouts are still unknown and helping one another, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one KHALIK MENOR y INDOL, by then and there stabbing him with a broken bottle, thereby inflicting upon him serious physical injuries which is necessarily fatal; thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of his will, that is, because of the timely and able medical attendance which prevented his death.

Contrary to law."[2]

After arraignment and trial, the trial court found petitioner Bacani guilty of homicide and of slight physical injuries:

"WHEREFORE, as regards Criminal Case No. 83--19581, the accused is hereby convicted of the crime of homicide under Article 249 of the Revised Penal Code and is hereby sentenced to suffer the penalty of 12 years and one day of reclusion temporal with all the accessory penalties as provided by law; to indemnify the heirs of Abetalib Usodan in the sum of P12,000.00, without subsidiary imprisonment in case of default, and to pay the costs.

With regard to Criminal Case No. 83-19582, the accused is also convicted of the lesser offense of slight physical injuries under paragraph 1 of Article 266 of the Revised Penal Code and is hereby sentenced to suffer the penalty of one month of arresto menor and to pay the costs.

SO ORDERED.”[3]

In a decision that is remarkable for its conspicuous brevity and a lack of analysis and discussion of evidence that had been presented before it, the trial court made the following findings of fact:

“The records show that in the evening of July 12, 1983, at around 9:00 o’clock, Abetalib B. Usodan, Khalik Indol Menor and Sinuding Angsal were at the second floor of Luisa and Sons Restaurant, on C. M. Recto Avenue, Manila, drinking beer and listening to a combo. After a while, Menor went to a comfort room to answer the call of nature. While inside the comfort room, he saw the accused and his three male companions, one of whom had a bandage on his forehead. Menor asked the man with the bandage what had happened to him. For [an] unknown reason, the man with the bandage resented the question, which prompted Menor to apologize to him. Menor rejoined his companions and they continued drinking beer. The accused and his companions approached the table of Menor and his friends. The two groups amicably settled the misunderstanding that occurred in the comfort room.

Later, after Menor and his friends paid their bills and were about to leave, they were suddenly attacked by the accused and his three companions and a melee ensued. During the fight, Abetalib B. Usodan was stabbed with a knife by the accused. The accused also stabbed Menor with a broken bottle, while the accused’s companions hit Sinuding Angsal with chairs. Moreover, the accused and his companions left the restaurant without paying their bills.

Usodan died of this knife wound before reaching the hospital, Exhibits ‘A’ and ‘F’, while Menor sustained physical injuries, which took less than nine days to heal, Exhibits ‘B’ and ‘C’.”[4]

Fifteen (15) days after Usodan had been stabbed to death and Menor injured with a broken bottle, that is, on 27 July 1983, at around 9:00 o’clock in the evening, while petitioner Bacani and his friends Rogelio Regerson and Godualfredo Tobon were walking home, three (3) policemen approached and asked them to board a Ford Fierra vehicle, and to go with them to the police station. Inside the vehicle, while en route to the police station, one of the police officers accused petitioner Bacani of having killed one of the Muslims involved in the 12 July 1983 brawl in the Luisa and Sons Restaurant. At the police station, petitioner Bacani was separated from his friends; the two (2) friends were, after sometime, allowed to go home. Petitioner Bacani, upon the other hand, was subjected to interrogation.

On the following day, 28 July 1983, at about 8:00 o’clock in the evening, Khalik Menor went to the police station and there executed a sworn statement (Exhibit, “A”) stating, among other things, that in a police line-up, he had identified petitioner Bacani as the man responsible for the stabbing of Abetalib Usodan and for attacking him (Khalik Menor) with a broken bottle. Petitioner Bacani was then charged, as noted, with homicide and frustrated homicide.

After conviction by the trial court, petitioner Bacani went on appeal to the Court of Appeals which, however, in a Decision dated 26 July 1990, dismissed the appeal and affirmed the decision of the trial court.

Petitioner is now before this Court on a Petition for Review alleging that the Court of Appeals had erred as follows:

1. in not finding that the prosecution’s evidence of “positive identification” was violative of petitioner Bacani’s constitutional rights;
2. in not finding that the identification of petitioner Bacani as the slayer of Abetalib Usodan and the attacker of Khalik Menor, had not been established beyond reasonable doubt; and
3. in concluding, contrary to the evidence of the prosecution itself, that the attack on Abetalib Usodan and Khalik Menor was preceded by a disagreement between a group of Muslims of which Usodan and Menor

formed part and petitioner Bacani's own group.

We have carefully examined the records of this case and we believe that both the trial court and the Court of Appeals failed to consider adequately certain facts which had been brought out during the trial, which facts generate in our mind a nagging doubt as to whether petitioner Bacani had indeed stabbed Abetalib Usodan to death with a knife and attacked Khalik Menor with a broken glass bottle.

Petitioner Bacani was convicted of both homicide and slight physical injuries fundamentally upon the testimony of Khalik Menor who had pointed to Bacani in a police line-up and identified him as the assailant who had stabbed Usodan and himself. Sinuding Angsal too, stated in court that he had seen Bacani stab Usodan as the two (2) were side by side.

The physical state, however, of the two (2) prosecution witnesses, Khalik Menor and Sinuding Angsal, who had been Abetalib Usodan's companions at the beer hall of the Luisa and Sons Restaurant on the night of the stabbing, was such as to create serious doubt as to the correctness of that identification.

In the sworn statement given by Menor on the day that he picked out petitioner Bacani in a police line-up (the prosecution's Exhibit "A"), he stated that at the time of the attack on Abetalib Usodan and himself, he (Menor), Usodan and Angsal had already drunk nine (9) bottles of beer each: five (5) bottles of beer each at Rico's Restaurant where they had began their drinking spree and four (4) bottles each at the Luisa and Sons Restaurant where they proceeded after leaving Rico's Restaurant, to continue their drinking.[5] Khalik Menor and Sinuding Angsal confirmed their statements in the testimony they respectively gave before the trial court.[6] Dr. Dario Gajardo, the physician who had conducted an autopsy on the deceased Abetalib Usodan, stated in his testimony that the level of alcohol found in the blood of the deceased Usodan was .23%. Dr. Gajardo also stated that a normal person with that percentage of alcohol in his blood would be sluggish of movement and would be "walking in a groggy manner"[7] and concluded that the victim Usodan was "under the influence of liquor at the time that he was stabbed." [8] Since Khalik Menor and Sinuding Angsal had ingested the same quantity of beer as the deceased Usodan, we must conclude that they were in the same physical condition that the deceased Usodan was when the melee or tumultuous affray erupted in the Luisa and Sons Restaurant. If Menor and Angsal were groggy and sluggish of movement, their ability clearly to perceive visually and remember the faces of their attackers must, in all probability, been similarly dulled and impaired.

Khalik Menor, who as noted was the principal prosecution witness, was probably in a worse physical condition than his two (2) companions. For in his sworn statement at the police station, Khalik Menor stated that he had taken "hycodine" (a cough syrup with a narcotic drug ingredient) before he and his companions had gone to the Luisa and Sons Restaurant:

14. T: Maliban sa beer, mayroon pa ba kayong ininom na alak o anumang bagay na nakalalasing?

S: Noon hong nasa Rico's kami ay uminom ho ako nq "HYCODINE".

T: Alam mo ba kung ano itong Hycodine?

S: Gamot ho sa ubo.

16. T: Nang inumin mo ang Hycodine, ikaw ba ay may ubo?

S: Wala ho.

17. T: Dati ka na bang umiinom ng Hycodine?

S: Oho.

18. T: Gaano na katagal na umiinom ka ng Hycodine?

S: High school pa ho ako.”[9] (Emphases supplied)

Nine (9) bottles of beer, especially when combined with “hycodine” cough syrup, appears to the court to be enough to create substantial doubt as to the capacity of Khalik Menor then to perceive the faces of their attackers (whom he was seeing for the first time in his life) with such clarity and sharpness as to be able to recognize petitioner Bacani in particular sixteen (16) days later in the police line-up.

In addition to the physical condition of Khalik Menor and Sinuding Angsal, referred to above, when they were at the beer hall of the Luisa and Sons Restaurant, two (2) other circumstances must be taken into account in appraising the “positive identification” of petitioner Bacani by Khalik Menor. Menor, Angsal and Usodan were drinking beer and listening to a band play on the second floor or beer hall of the Luisa and Sons Restaurant. The place was not ablaze with light; it was dimly lit being illuminated merely by flickering red lights.[10] In his sworn statement, Khalik Menor stated that the place was dark (“medyo may kadiliman”) but claimed that he was able to see petitioner Bacani because of the light which came from the first floor of the Restaurant:

“22. T: Sinabi mo na sinaksak si Abe o Abetalib ng kutsilyo, sakali bang makita mo ulit ang kutsilyong ginamit na panaksak kay Abe, ito ba ay makikilala mo at maituturo mo sa amin?

S: Hindi ko ho masyadong matandaan ang hitsura kasi mabilis ho ang pangyayari at medyo may kadiliman.

23. T: Sinabi mo na may kadiliman, papaano mo makikilala ang mukha ng tao sa lugar na iyon?

S: Kasi ho may ilaw na nanggagaling sa first floor.”[11] (Underscoring supplied)

In his testimony during cross-examination, Sinuding Angsal stated that the second floor or mezzanine of the restaurant where they sat drinking beer was smoky and “a little dim” with “flickering lights.”[12]

The second circumstance that must be noted is that the melee or brawl which erupted on the second floor or beer hall of the Restaurant involved at least ten (10) or twelve (12) individuals, all of whom were total strangers to Khalik Menor and Sinuding Angsal. The attack by one of these strangers (allegedly petitioner Bacani) on Usodan and Menor was sudden and commenced without any warning,[13] in a situation marked by noise and alarm and confused fighting and brawling among at least twelve (12) persons. Under these conditions, and bearing in mind the physical condition of Khalik Menor and Sinuding Angsal resulting from drinking beer for at least five (5) hours, in addition to ingestion of a narcotic cough syrup by Khalik Menor, the accuracy and reliability of the identification by Menor and Angsal of petitioner Bacani as the assailant must be regarded as open to serious doubt.[14]

It is also worth noting that the prosecution witnesses appeared uncertain or inconsistent in pointing to petitioner Bacani as the assailant of both Abetalib Usodan and Khalik Menor. Menor said in his sworn statement given before the police authorities that one of the attackers had stabbed him with a broken bottle while another person had knifed Usodan:

“11. T: Maari bang isalaysay mo ang buong pangyayari tungkol sa pagkakasaksak at pagkakapalo sa iyo?

S: x x x Iyong isa sa kanila ay sinaksak ako ng basag na bote samantalang iyong isa naman ay sinaksak si Abe ng kutsilyo at ang iba ay pinalo si Ding ng silya.”[15] (Underscoring supplied)

In court, however, Khalik Menor testified that petitioner Bacani had stabbed both Usodan and Menor himself. Sinuding Angsal also testified that Bacani had stabbed both Usodan and Menor; on cross-examination, however, he kept referring to “they” as having stabbed Usodan and Menor, without differentiating petitioner Bacani from

other unnamed persons:

“q: When was the last time you saw the accused?

a: When they stabbed Abetalib.

q: So that was the time ...?

a: They stabbed Abetalib first and after they stabbed Abetalib, they turned to Khalik.

q: When you said ‘they’ who were they?

a: His companions (witness pointed to the accused Bacani).”[16] (Underscoring supplied)

It appears, therefore, that Angsal was not really certain as to whether or not petitioner Bacani himself had stabbed both Usodan and Menor, nor certain as to the identity of the persons responsible for the injuries sustained by Usodan and Menor. Angsal apparently assumed that petitioner Bacani was one of the unknown and unnamed assailants because he (Angsal) believed that the assailants were companions of petitioner Bacani.

Where identification of the doer of the crime is forthright, clear and positive, and not open to serious question, there is no necessity for proving the motive which moved the doer. Where, however, as in the case at bar, the identification is open to substantial question, proof or failure of proof of the motive for the attack appears relevant. In the case at bar, the motive alleged for petitioner Bacani’s supposed attack on Usodan and Menor remained murky and never satisfactorily proved. Khalik Menor had initially testified that he believed that Abetalib Usodan would be attacked because a woman working in the restaurant as a waitress grew angry at Usodan:

“q: As a matter of fact Abetalib was at your back?

a: Yes, sir.

q: How did you see that Abetalib was stabbed by Protacio Bacani?

a: We were on our way out.

q: That is why, how did you see?

a: I looked at him.

q: Who?

a: Abetalib.

q: Why did you look at him?

a: Because I knew that he was the one to be attacked, ‘siya anq nakursonadahan.’

q: How do you know that he was the one to be attacked?

a: Because of a woman.

q: Who is that woman?

a: I do not know. She works there.

q: Why do you say because of that woman? What about that woman?

a: What I knew, since I do not frequent the place, Abetalib I think knew the girl.

q: Why do you say that you knew that Protacio Bacani was going to stab Abetalib because of that woman? The reason why you looked at Abetalib because you knew there was a reason and it was because of the woman. What happened that night about the woman?

a: As if the woman was angry.

q: At whom?

a: At Abetalib.

q: What has the anger of that woman got to do with Protacio Bacani, the accused?

a: None, sir.

q: You say that the reason why you looked at Abetalib because he was to be stabbed by Protacio because of the woman?

a: Yes, sir.”[17] (Underscoring supplied)

But Menor, right in the middle of his testimony, changed his tune:

“q: What happened that Protacio came to Abetalib and stabbed Abetalib?

a: No, sir, Protacio did not stabbed Abetalib because of the woman.

q: What is the reason why he was stabbed?

a: Because we were together.

q: You said a while ago you make amend already why is it that there were stabbing?

a: Even though we already make amends with each other as if they were still angry with us.

q: Let us come back when you said Abetalib was following you?

a: Yes, sir.

q: Why did you see Abetalib when Abetalib was at your back?

a: He was near me. I just turned my head and I saw it.

q: What was the reason why you looked at him? What made you looked at him?

a: As if I feel something might happen so I looked at him.”[18] (Emphases supplied)

And so Menor went on to suggest that he and Usodan and Angsal had been attacked because of a misunderstanding that he (Menor) had with some unknown person with a bandaged forehead inside the washroom of the Restaurant.

For his part, petitioner Bacani admitted that he along with two (2) companions, was present at the Luisa and Sons Restaurant’s beer hall during the melee. He testified that he and his companions ran out of the establishment when the tumult and fighting began. Bacani’s testimony was corroborated by his two (2) companions -- Rogelio Regerson and Godualfredo Tobon -- who had been students like petitioner Bacani himself.

A judgment of conviction requires that the accused be shown to have been the perpetrator of the crime charged in the information by proof beyond reasonable doubt. Unless the accused is identified as the doer of the crime by such proof, the charge against the accused must be dismissed for the constitutional presumption of innocence has not then been overcome.[19] In the case at bar, the mind and conscience of this Court are not at ease with the

identification of petitioner Bacani as the slayer of Abetalib Usodan and as the assailant of Khalik Menor. The presumption of innocence to which petitioner Bacani is entitled, has not been successfully overthrown.

Both before the Court of Appeals and before this Court, petitioner Bacani's counsel has raised a number of issues all relating, in varying degrees, to the constitutional rights of petitioner Bacani as a person accused of crime. In the course thereof, petitioner's counsel has made arguments and submissions which the Solicitor General, apparently in exasperation, has described as "wild" and "weird" theories. With the conclusion that we have reached above, there is no necessity for examining and passing upon petitioner's constitutional law arguments.

WHEREFORE, the Decision of the Court of Appeals dated 26 July 1990 is hereby REVERSED, and petitioner is ACQUITTED of the crimes charged, his guilt thereof not having been shown by proof beyond reasonable doubt. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., Romero, and Melo, JJ., concur.
Bidin, J., in the result.

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- [1] Records, Criminal Case No. 83-19581 for Homicide, p. 1.
[2] Records, Criminal Case No. 83-19582 for Frustrated Homicide, p. 1.
[3] Records, A.C.-G.R. CR No. 05201, p. 19.
[4] Trial Court Decision, p. 1.
[5] Records, Criminal Case No. 83-19581 for Homicide, p. 40.
[6] TSN, 13 October 1983, pp. 31-33; TSN, 17 October 1983, pp. 23-25.
[7] TSN, 19 October 1983, p. 12.
[8] Id., p. 22.
[9] Records, Criminal Case No. 83-19581 for Homicide, Records, p. 41.
[10] TSN, 13 October 1983, p. 37.
[11] Records, Criminal Case No. 83-19581 for Homicide, p. 41.
[12] TSN, 17 October 1983, pp. 31-32.
[13] TSN, 13 October 1983, p. 10.
[14] In the case of *People v. Bautista* (148 SCRA 155 [1987]), this Court said:

"We are not unmindful of prior rulings of the Court that the testimony of one witness is sufficient for conviction where such witness positively identified the accused as the wrong-doer. (*People v. Tintero*, 111 SCRA 714 [1982]; *People v. Oquino*, 122 SCRA 797 [1983]). In the instant case of Jose Bautista, however, the totality of the circumstances here relating to him, especially the milieu of tumult, disorder and confusion, (which is perhaps most dramatically brought home by recalling that three supposed co-accused remain, even today, unidentified: John Doe, Peter Doe and Richard Doe) is such that a very substantial doubt persist in our mind whether Jose had in fact stabbed Prospero at all. That milieu we regard as imposing upon the prosecution a more exacting degree of proof than would be necessary in the absence of confusion and turmoil. x x x." (148 SCRA at 163).

[15] Record, Criminal Case No. 83-19581 for Homicide, p. 40.

[16] TSN, 17 October 1983, p. 37.

[17] TSN, 13 October 1983, pp. 39-41.

[18] *Id.*, pp. 41-43.

[19] *People v. Fontanilla*, 199 SCRA 897 (1991); *People v. Acosta*, 187 SCRA 39 (1990).

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