

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO “RUDY” CAYETANO, ACCUSED-APPELLANT.**

G.R. No. 97564. June 29, 1993

Ponente: MELO, J.

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MELO, J.:

On June 9, 1988, Rodolfo "Rudy" Cayetano was charged before the Regional Trial Court of the 5th Judicial Region (Roxas City, Branch 16), with the crime of murder in an Information which reads:

That on or about the 3rd day of February, 1988, in the City of Roxas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a handgun with intent to kill, did then and there willfully, unlawfully and feloniously shoot with said handgun one ANTONIO BAES, JR. inflicting upon him wounds, to wit:

1. Gunshot wound located at the forehead 1 cm. above the right eyebrow, with inverted border, with bluish discoloration of the skin, measuring 1 cm. in its greatest diameter, penetrating the skull injuring the brain tissues;
2. Gunshot wound located at the anterior aspect of the neck, just below the chin, oval in shape with bluish discoloration of the skin, measuring 1 cm. in diameter; point of exist located at the right side of the mandible 3 cm below the right pinna, stellate in shape with everted border.

which injuries resulted to his death.

That the qualifying circumstance of treachery is present, the accused employed nighttime to insure his sudden unprovoked attack coupled with the generic aggravating circumstance of evident premeditation.

That as a direct consequence of the unlawful act of the accused, the heirs of the deceased suffered actual, moral and other damages in the amount of One Hundred Thousand (P100,000.00) Pesos, Philippine Currency.

CONTRARY TO LAW.

Roxas City, Philippines, June 9, 1988.

(SGD) NAPOLEON VC FERRER

1st Asst. City Fiscal

Incharge of Office

(pp. 76-77, Rollo.)

Following trial on the merits due to Cayetano's plea of "not guilty", the lower court rendered its decision on October 19, 1990, disposing as follows:

WHEREFORE, the Court finds the accused Rodolfo (Rudy) Cayetano GUILTY beyond reasonable doubt of the

crime of MURDER and taking into account the presence of the generic aggravating circumstance(s) of evident premeditation without any mitigating circumstance to offset the same and taking into consideration the abolition of the death penalty under the 1987 Constitution [this court] hereby imposes upon said accused the single penalty of Cadena Perpetua (life imprisonment) together with the accessory penalty, to indemnify the heirs of Antonio Baes Jr., in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs in this case.

He shall be credited with the full period of his detention under Art. 29 of the Revised Penal Code as amended by R.A. 6127.

SO ORDERED. (p. 96, Rollo.)

From the judgment of conviction, Cayetano has appealed to us putting forward the single and sweeping argument:

THAT THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND ERRED IN NOT ACQUITTING THE ACCUSED APPELLANT OF SAID CRIME OF MURDER. (p. 102, Rollo.)

The brief submitted by the Office of the Solicitor General presents the established background facts, thus:

On February 3, 1988, Reynaldo Bartolo came home at about 5:00 o'clock in the afternoon from his work as tricycle driver (pp. 13-14, tsn, Feb. 22, 1989). Upon arriving at his house at Barangay Cagay, Roxas City, Bartolo asked his brother-in-law, Antonio Baes, Jr. about his basketball (pp. 6, 11, 14, tsn, Id.). Baes, Jr. answered that the ball was taken by appellant. Bartolo then went to the basketball court where appellant and his group were playing basketball. Bartolo got the ball when it rolled to the side of the court and left with it (pp. 15, 16, tsn, Id.). Before Bartolo could leave the basketball court, appellant said in a threatening voice, "Tan-awa galing karon kay may matabo!" (You will see, something will happen by and by). (p. 17, tsn, Id.).

At about 8:00 o'clock in the evening of the same day, the house of Bartolo was stoned 3 times (pp. 18, 25, tsn, Id.). After the third time of stoning, Bartolo went down the house and went near the house of his brother William (pp. 26-27, tsn, Id.; p. 3, tsn, Sept. 18, 1989). Following Bartolo at a distance of 30 meters was Antonio Baes, Jr. (pp. 28, 32, tsn, Feb. 22, 1989). When Baes, Jr. came closer to Bartolo, he asked Bartolo to return to the house (p. 2, tsn, Sept. 18, 1989).

While Bartolo and Baes, Jr. were walking back to the house, there was a sudden burst of gunfire and Bartolo just saw Baes, Jr. lying on the ground with his face upward (pp. 3-4, tsn, Id.). Ramon Belo who was in a nearby store saw appellant shoot the victim (pp. 3-4, tsn, Feb. 14, 1990). Bartolo then ran towards the house of his brother William and asked for help. William brought out his tricycle and used it to bring Baes, Jr. to the St. Anthony Hospital (pp. 4, 5, tsn, Sept. 18, 1989). Baes, Jr. was taken to the emergency room but a short time thereafter, one Dr. Billones pronounced him dead. Bartolo then went to the police quarters and reported the matter for investigation (p. 5, tsn, Id.). [pp. 1-2, Brief for the Plaintiff-Appellee; p. 159, Rollo.]

Dr. Rafael Almalbis, Jr. of the Roxas City Health Office conducted a post-mortem examination on Baes, Jr. and found two gunshot wounds, one on the forehead and the other on the anterior aspect of the neck. According to him, the immediate cause of death was the first gunshot (intra-crannial hemorrhage secondary to gunshot wound), fired at close range. The gun, he declared:

... must have been fired at close-range which could be at a distance of not closer than 6 inches but not farther than 24 inches from the victim. The assailant must have been in front of the victim when the former fired the gun at the

latter and it could be possible that both of them were on standing position. (p. 78, Rollo.)

Accused-appellant was convicted on the basis of his positive identification as the assailant by Ramon Belo, which the trial court, in terse telegraphic and a bit ungrammatical sentences, summarized as follows:

While he was sitting just outside the store of Deling he saw the accused Rudy Cayetano standing and leaning against the fence of a yard. Almost at the same moment he saw the victim, Antonio Baes, Jr. arrive. The victim was about to turn towards the pathway leading to their house, he (victim) was shot by the accused. The victim then fell to the ground. He saw the gun which the accused used. It was a handgun about 11 inches long. The witness ran away. (pp. 9-10, RTC Decision; pp. 83-84, Rollo.)

Based on a sketch made in open court by Reynaldo Bartolo (Exh. "C"), a picture is presented of the location of Bartolo's house and the place where Baes, Jr. was shot. Fronting Bartolo's house which faces east is a pathway, fenced on both sides by bamboo trees (Tsn, Feb. 2, 1989, p. 24; Exh. "C-7"). This pathway connects to a cemented road south of Bartolo's house (Exh. "C-6"), known as Cagay Road. The place where Baes, Jr. was shot, which is marked by an "X" on the sketch, is at the corner of the pathway and the Cagay Road (Tsn, Oct. 25, 1989, p. 4). Baes, Jr. fell on the cemented road, face upward. This corner is about 40 meters away from Reynaldo's house, forming a right angle, and also the same distance to William Bartolo's house, which is at Cagay Road. It is 10 meters away from Deling's Store which is likewise located along Cagay Road (Decision, p. 83, Rollo).

The testimony of Bartolo on the circumstances prior to the killing was synthesized by the trial court in the following manner:

After hearing the 3rd thudding sound, the witness went down the house. When he left he saw the victim Antonio Baes, Jr., lying on a hammock inside the house. After touching the ground the witness proceeded towards the house of his brother William. He had gone already for about 30 meters from his house then he looked back. He noticed that Antonio Baes, Jr., was following. The moon that night was bright and was up in the sky at the position of 10:00 o'clock A.M. by the sun. (This could be about 60° angle of the arc from 6:00 o'clock to 12:00 o'clock going clockwise.)

After he noticed that Antonio Baes, Jr. was following him he stopped and waited for him. When Antonio Baes, Jr. was approaching the witness the former said: "Manoy, let's go back because we could not find the man who threw the stones."

The two nevertheless proceeded to the house of William Bartolo and found it closed. Everything was quiet. The two decided to go back home. Antonio Baes, Jr. was following about 9 meters behind the witness (Bartolo). Suddenly, the witness heard an explosion. He looked back and saw that his brother-in-law had fallen. (p. 81, Rollo.)

Reynaldo Bartolo further testified:

Q. What happened then?

A. While we were on our way back to our house Antonio Baes, Jr. was ahead of me and when I turned back I heard a blast (lupok).

Q. What happened next?

A. After the blast when I turned my face to my brother-in-law he was already lying in the road facing upward.

Q. How far were you then at your brother-in-law when you heard that burst?

A. May be from the witness stand to the main door of the Court estimating around 9 meters more or less.

(Tsn, Sept. 18, 1989, p. 3.)

Accused-appellant, however, believes that his identity was not satisfactorily established due to inaccuracies or inconsistencies in Belo's testimony. It is argued that while Belo testified in court that he saw accused-appellant leaning on the fence beside the Tiya Deling's Store and that accused-appellant then shot Baes, Jr., while the latter was about to make a turn towards his (Baes, Jr.'s) house, in his affidavit, Belo stated that accused-appellant was squatting by the side of the pathway and when accused-appellant noticed two persons walking following each other, he suddenly stood up and aimed his gun at the man walking at the front.

Likewise, as against Belo's testimony in court that he immediately ran away after he saw Baes, Jr. fall to the ground, Belo stated in his affidavit that he even asked permission from Tiya Deling (the owner of the store) that he be allowed to pay his debt the following day.

The inconsistencies, however, refer to minor details and do not affect Belo's positive identification of accused-appellant as the assailant. Inconsistencies in the testimony of prosecution witnesses do not affect their credibility for as long as there is no disagreement as to the identity of the malefactor. Indeed, more convincing is the testimony with a bit of inconsistency than memorized perjury (*People vs. Segwaben*, 194 SCRA 239 [1991], citing *People vs. Jutie*, 171 SCRA 586 [1989], at p. 241).

Accused-appellant's defense is alibi, that is, that he was asleep in his house at the time of the accident. He denied his presence at the basketball court and disowned any motive to kill Baes, Jr. To corroborate his testimony, he presented his sister, Lucia Panis, and his father, Rosendo Cayetano.

We have consistently ruled that alibi is a weak defense and can only be accepted upon the clearest proof that the accused was not or could not have been at the scene of the crime when it was consummated (*People vs. Peralta*, 193 SCRA 9 [1991]), more so if the alibi is established by the accused himself and his relatives, and not by credible persons (*People vs. Solis*, 195 SCRA 405 [1991]; *People vs. Flores*, 195 SCRA 295 [1991]). Further, the ocular inspection of the place conducted by the trial court in the presence of the prosecution, defense counsel, Reynaldo Bartolo, and accused-appellant, revealed that accused-appellant's house is located near the basketball court and is only 150 meters away from the place where Baes, Jr. was shot, following a straight line, or 200 meters, by a circuitous route. There was, therefore, no physical impossibility for accused-appellant to have been at the scene of the crime at the time it was committed.

On the absence of motive, again, we have ruled that motive is immaterial where the identity of the accused has been established (*People vs. Gabatin*, 203 SCRA 225 [1991]; *People vs. Ballinas*, 202 SCRA 519 [1991]; *People vs. Pigon*, 173 SCRA 607 [1989]). Neither is motive an essential element of murder for which reason it does not have to be proved by the prosecution (*People vs. Catalina Lorida, et al.*, G.R. No. 93240, January 22, 1993). Motive in the case at bar becomes relevant only to determine the nature of the crime committed.

In convicting accused-appellant, the trial court used treachery (employing nighttime to ensure his sudden unprovoked attack) and the presence of the generic aggravating circumstance of evident premeditation without any mitigating circumstance to qualify the crime to murder (*People vs. Aguilar*, 88 Phil. 693 [1951]).

We agree that the presence of treachery qualified the crime to murder. However, we do not believe that there was evident premeditation. Mere threats unsupported by other evidence which would disclose the true criminal state of mind of the accused do not justify a finding of evident premeditation. The rule is that the qualifying circumstance of premeditation is satisfactorily established only if it is proved that the accused had deliberately planned to commit the crime, and had persistently and continuously followed it, notwithstanding the passage of ample time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and

reflection (People vs. Bautista, 79 Phil. 652 [1977]; People vs. Sarmiento, 8 SCRA 263; People vs. Edna Cordero, G.R. No. 97229, January 5, 1993).

There being no aggravating or mitigating circumstances, the applicable sentence, pursuant to People vs. Muñoz (170 SCRA 107 [1989]; People vs. Barba (203 SCRA 436 [1991]), is the medium period of the penalty prescribed by Article 248 of the Revised Penal Code which is reclusion perpetua which the trial court, however, equated with life imprisonment or cadena perpetua; and conformably with recent rulings, the civil indemnity should be increased to P50,000.00.

WHEREFORE, the appealed decision is hereby AFFIRMED with the following modifications: (1) the imprisonment penalty should be Reclusion Perpetua; and (2) the amount of indemnity to be paid by accused-appellant to the heirs of the victim is increased to P50,000.00.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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