

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO APAWAN Y TAPI, ACCUSED-APPELLANT.

G.R. No. 97933. September 30, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

This is an appeal from the decision[1] of the Regional Trial Court of Zamboanga City, Branch 14, which found appellant guilty beyond reasonable doubt of the crime of Murder, described in and penalized under Article 248 of the Revised Penal Code and which sentenced him to suffer the penalty of reclusion perpetua. The trial court ordered the appellant to indemnify the heirs of the victim, Edgardo Yap, in the amount of P30,000.00 and to pay the amount of P150.00 as costs of the proceedings.[2]

The information for MURDER, docketed as Criminal Case No. 7191 against appellant Antonio Apawan y Tapi reads:

"That on or about August 13, 1984, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, said accused, armed with a knife, by means of treachery and evident premeditation and with intent to kill, did then and there, willfully, unlawfully and feloniously, assault, attack and stab with the said weapon that he was then armed with the person of EDGARDO YAP y ALMOSERA, thereby inflicting upon the latter's person mortal stab wounds, which directly caused his death, to the damage and prejudice of the heirs of said victim."[3]

The appellant entered the plea of not guilty upon arraignment.

Established by evidence proffered, according to the Solicitor General in the Appellee's Brief, are the following facts:

"Ernie Escala, a maiden 20 years of age, was in 1984 a resident of Tumaga interior, Zamboanga City (pp. 2-3, t.s.n., November 12, 1984). She had two cousins involved in the present controversy: the first, appellant Antonio Apawan, was her cousin on (sic) the mother's side; and, the second, Edgardo Yap, was her cousin on the (sic) father's side (p. 3, id.).

While appellant's residence was situated adjacent to Ernie's house (p. 12, t.s.n., December 18, 1984), appellant was unable to establish a warm affinity with Ernie and her sisters. On the few times that he visited Ernie's house, the atmosphere was indifferent and cool. In the language of Estela Escala (a sister of Ernie), whenever appellant was in their house, the "surrounding is silent" (p. 13, t.s.n., id.).

On the other hand, Edgardo was a welcome guest in Ernie's household. Every once in a while -- particularly during moonlight nights -- he stayed in the house of Ernie; at other times, though he slept in his fishing boat (pp. 11-12, t.s.n., November 12, 1984).

On August 13, 1984, at about 3:00 (sic) o'clock in the afternoon. Ernie had the occasion to take a snack with Edgardo in her house (p. 4, t.s.n., November 12, 1984). With them were her sisters and brothers, namely: Agnes, 7 years old; Liza, 10 years old; Shirleta, 15 years old; and, Vicente, 3 years old (pp. 4, 7, id.). They

were all seated around a table in the kitchen (p. 7, id.).

While Edgardo was thus seated on a chair facing Ermie (p. 7, id.), appellant suddenly appeared from behind. Bent on releasing his fury, appellant attacked Edgardo with a knife (p. 10, id.), hitting the latter twice: the first, on the left lumbar region lacerating the left kidney (pp. 21-22, t.s.n., December 18, 1984) and, the second, on the right thigh (p. 22, id.). Edgardo stood up to run away but the gravity of his wounds must have made him collapse and fall on the kitchen floor (p. 11, t.s.n., 1984). He died as a consequence of the first wound, which, according to the medico-legal officer who later examined his body, was "fatal" (p. 22, December 1984).

Meanwhile, appellant focused his attention on Ermie as he initiated another violent assault (p. 5, t.s.n., November 12, 1984). Ermie lost no time; with personal safety in mind, she jumped through the window to escape (id.). It was at this time when Ermie's sister, Estela, grabbed appellant's knife (id.). Incidentally, it appears that Estela had just awoken from her sleep at the second floor of the house (p. 5, t.s.n., December 18, 1984).

Appellant was later pacified as his mother arrived (p. 9, id.). Thereafter, he was arrested by the police who responded to the crime scene (p. 13, t.s.n., November 12, 1984)."[4]

On the other hand, appellant presented a different version of the incident by alleging that, at around 3:00 p.m. of August 13, 1984, he was engaged in a conversation with his cousin Ermie Escala at the balcony of the latter's house. The victim, upon seeing appellant, went downstairs and confronted him as to why he was peeping at Ermie. Appellant retorted that he cannot possibly do such a thing as Ermie was like a sister to him. The victim punched appellant on the breast and stomach, causing the latter to fall on the floor of the balcony. The victim, who was physically bigger, jumped at appellant who then ran towards the kitchen. Appellant unfortunately stumbled, and so, the victim caught up with him, and held his neck. They fought each other. Appellant then spotted the knife tucked to the body of the victim. He allegedly grabbed the knife but the knife fell on the floor. They grappled for the possession of the knife. Appellant got hold of it and stabbed the victim with it. Appellant went home, crying and reported the incident to his mother. His mother called for a policeman. Appellant surrendered and turned over the fatal knife to the police officer.[5]

Appellant assigns the following as errors of the court a quo, viz.:

"I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE BIASED TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING IN FAVOR OF THE ACCUSED-APPELLANT THE MITIGATING CIRCUMSTANCE OF SUFFICIENT PROVOCATION ON THE PART OF THE OFFENDED PARTY (SIC) IMMEDIATELY PRECEDED THE ACT.

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER INSTEAD OF HOMICIDE."[6]

As to the first assigned error, appellant contends that the testimonies of the prosecution witnesses are biased. He alleges that the Escala sisters had the motive to testify against him as they "nursed ill-feeling" towards him, for he allegedly used to peep at them whenever they were asleep and they claim that he killed Edgardo Yap, a cousin closer than he to the Escala family. Secondly, Ermie Escala's testimony that appellant chased her with the intention of stabbing her, does not, according to appellant, inspire belief, for, if such was the case, Ermie Escala would have filed attempted murder charges against him and she would have sustained sprains or injuries when jumping from the window. Thirdly, appellant contends that the declarations of the Escala sisters that Estela was

able to wrest the knife from him is simply unbelievable. Lastly, appellant contends that Estela's testimony is fraught with inconsistencies, specifically, when she testified that she gave the knife taken by her from appellant to the police. Yet, when cross-examined, she claimed that the said weapon was taken from her by appellants' mother.

As correctly observed by the Solicitor General, aside from the testimony of Estela Escala that appellant used to peep at them whenever they were asleep, there is nothing in the records to show that the Escala family resented appellant's attitude. The alleged close relationship of the victim with the Escala sisters is not motive enough for them to testify falsely against appellant. Appellant is also a cousin of the Escalas.

A perusal of the records show that appellant is agreeable in this regard as he admitted his close relationship with the Escala sisters. The testimony of appellant reads as follows:

Q :

Now how close are you to Ermie Escala?

A :

Very close to each other.

Q :

And as a matter of fact you always stayed (sic) to the house of Ermie Escala?

A :

Yes, sir.

Q :

Ermie Escala has nothing against you?

A :

I have not heard any from her.

Q :

And because Ermie Escala are (sic) your relative and you are close to her she has no reason to testify against you is that correct?

A :

I do not know why she testify (sic) against me I was very much surprised to the fact that we were closed (sic) and relative and close at that.

Q :

You know (sic) you do not know any reason (sic) because of that she should testify falsely against you is that correct?

A :

I don't know of any reason?

Q:

You do not know. That is all for the witness."[7]

No evil motive has been proven against both witnesses of the prosecution that might prompt them to testify falsely against appellant; nor was there any reason on their part to incriminate appellant but justice.[8] Hence, their testimony is worthy of full faith and credit.[9]

It is also appellant's contention that had he truly attacked Ermie Escala, the latter would have filed an attempted murder case against him. The fact that Ermie did not so file does not affect the veracity of Ermie's testimony. The prosecution of crimes, especially those involving crimes against the state, is the concern of the peace officers and the government prosecutors.

The allegation of appellant that Ermie should have sustained sprains or injuries and that its absence belies her claim that she jumped off the window is speculative. A perusal of the records show that, neither the prosecution nor the defense questioned Ermie if she sustained injuries as a result of the incident. Furthermore, there was no evidence presented as to the height of the window that would cause injury to a person who jumps from it.

As to appellant's claim that it was improbable for Estela to have grabbed the knife from appellant, the Solicitor General aptly said:

"Estela had just awaken(ed) from her sleep. She did not witness the manner appellant treacherously assaulted the victim. To her, appellant was her known cousin and neighbor -- not a determined criminal."[10]

Naturally, her initial reaction was to prevent appellant from inflicting further injury on the victim, so she wrestled with the appellant and grabbed the knife from him. Probably, it was also the turning point when appellant regained his senses and decided to get rid of the knife.

Appellant also harps on the alleged inconsistencies in the testimony of Estela with regard to the question as to who was in possession of the knife when the police arrived. However, whether Estela gave the knife taken from appellant directly to the police authorities or to appellant's mother will not negate the fact that it was the said knife which appellant used in killing the victim.

Appellant insists, as regards the second and third errors assigned by him, that there was sufficient provocation on the part of the victim who called him a "peeping tom" immediately before the incident. Hence, he concludes that the said circumstance negates the attendance of treachery in the commission of the crime. Even if the victim's fatal stab wound was at the back, the same does not by itself constitute alevosia.[11]

It is a fundamental legal aphorism that the conclusions of the trial judge on the credibility of witnesses are entitled to great weight and should be accorded the highest consideration.[12] The only exception to the rule is when the trial court had overlooked, misunderstood or misapplied certain facts which, if considered, will materially alter the result of the case.[13] This particular case does not fall within the ambit of the exception to the general rule.

Thus, contrary to appellant's assertion, the victim did not commit any act of provocation or aggression during the incident. The testimony of Ermie Escala buttresses this fact when she narrated how appellant treacherously killed the victim, viz.:

"Q :

Now, while you were taking your merienda was there any unusual incident that transpired then?

A :

That was the incident when Antonio Apawan stabbed Edgardo Yap.

Q :

Will you please tell the court how Antonio Apawan stabbed Edgardo Yap at that time?

A :

Edgardo Yap was sitting on the chair and he was stabbed by Antonio Apawan at the left side of this back and the other one is on the right leg.

Q :

Now, where did this Antonio Apawan come from, if you know?

A :

I did not know.[14]

x x x x x x x x

Q :

You said that you saw Antonio Apawan stabbing Edgardo Yap how far were you from him?

A :

It is (sic) nearer because we were facing one another.

Q :

When Antonio Apawan appeared in your house he was not (sic) bringing any knife, is that correct?

A :

I did not notice his appearance but I saw when he stabbed Edgardo Yap.

Q :

When he appeared in your house he did not stab immediately Edgardo Yap, is that correct?

A :

When I saw it he already had stabbed Edgardo Yap, I did not notice his appearances (sic) what I saw he already have (sic) stabbed Edgardo Yap.

Q :

But you heard Antonio Apawan talking to Edgardo Yap, is that correct?

A :

No, sir.[15]

x x x x x x x x

Q :

You stated that the victim was hit two times. One at the left back and the other one on the right thigh, which injuries (sic) comes first?

A :

The one at the back was the first one and followed (sic) on it this right leg.

Q :

What was the position of the victim while the accused is stabbing at the back?

A :

He was seated sidewise.

Q :

And the accused comes (sic) at the back of the victim?

A :

Yes, Sir.

Q :

Do you know if the victim was aware of the person of the accused before the accused stabbed him?

A :

No, Sir.

Q :

And after the accused have (sic) stabbed the victim at the back, what happened to the victim?

A :

He was stabbed again on the right leg then, he ran, that is the time when he fell down.

Q :

The victim was sitting down when the accused stabbed the victim for the first time is that correct?

A :

Yes, Sir.

Q :

And when the accused stabbed the victim for the second time, the victim was still sitting down, is that right?

A :

Yes, sir."[16]

From the foregoing testimony, it can be clearly gleaned that treachery was present as the victim was not in a position to defend himself from the unexpected attack of the accused.[17] That appellant purposely adopted this mode of attack to consummate the crime without any risk to himself is beyond doubt.[18] There is treachery when the attack on the victim was from behind, was sudden and unexpected, and was perpetrated without warning,[19] thus ensuring the execution of the criminal act without risk to the assailant.[20]

Lastly, the mitigating circumstance of voluntary surrender cannot be appreciated in favor of appellant in consonance with the trial court's finding that:

x x x accused Antonio Apawan did not surrender to the police after the commission of the crime but in truth it

was the policeman who placed him under arrest and brought him to the METRODISCOM for investigation." [21]

WHEREFORE, the decision of the trial court is AFFIRMED, with the MODIFICATION that the indemnity to the heirs of the victim be increased from P30,000.00 to P50,000.00.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Penned by Judge Salvador A. Memoracion.

[2] Rollo, p. 70.

[3] Rollo, p. 8.

[4] Rollo, pp. 81-84.

[5] TSN, February 18, 1985, pp. 2-21.

[6] Rollo, p. 54.

[7] TSN, February 11, 1985, p. 21.

[8] *People v. Perciano*, 233 SCRA 393 (1994).

[9] *People v. Villafuerte*, 232 SCRA 225 (1994).

[10] Rollo, p. 89.

[11] Appellant's Brief, pp. 7-8.

[12] *People v. Gonzales*, 230 SCRA 291 (1994); *People v. Alapide*, 236 SCRA 555 (1994); *People v. Timple*, 237 SCRA 52 (1994).

[13] *People v. Garcia*, 235 SCRA 371 (1994).

[14] TSN, November 12, 1984, pp. 4-5.

[15] TSN, November 12, 1984, pp. 7-8; underscoring supplied.

[16] TSN, November 12, 1984, p. 10; underscoring supplied.

[17] *People v. Lualhati*, 234 SCRA 325 (1994).

[18] *People v. Suitos*, 220 SCRA 419 (1993)

[19] *People v. Boniao*, 217 SCRA 653 (1993).

[20] *People v. Cordero*, 217 SCRA 10 (1993).

[21] Decision, p. 6; Rollo, p. 13.

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