

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO LASE, ALIAS “BERT”; ACCUSED-APPELLANT.

G.R. No. 97957. March 05, 1993

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DAVIDE, JR., J:

Accused-appellant appeals from the decision of Branch 45 of the Regional Trial Court (RTC) of Masbate in Criminal Case No. 5557[1] convicting him of the crime of murder for the death of Dante Huelva on 18 May 1987 in Barangay Pia-ong, Dimasalang, Masbate, and sentencing him:

"x x x to suffer the penalty of RECLUSION PERPETUA in the absence of any mitigating circumstance and to indemnify the parent of the victim in the amount of P30,000.00." [2]

The decision was promulgated on 18 February 1991.

The records disclose that two (2) days after the killing of Dante Huelva, a criminal complaint for murder was filed by the Acting Station Commander of the Integrated National Police (INP) of Dimasalang, Masbate with the 5th Municipal Circuit Trial Court (MCTC) of Dimasalang-Palanas-Uson (5th Judicial Region) at Dimasalang, Masbate.[3] The Judge presiding over the said court asked both Ramon Sayson,[4] who was Dante's companion when the incident occurred, and Godofreda Huelva,[5] Dante's mother, searching questions. The court then issued a warrant for the arrest of the accused-appellant and fixed the bail bond for his temporary liberty at P30,000.00.[6]

Accused-appellant was arrested on 20 May 1987 and was released the following day after posting the required bond.[7]

Having failed to submit his counter-affidavit for purposes of the preliminary investigation, the MCTC considered him as having waived the second stage of the preliminary investigation and ordered the records of the case forwarded to the Office of the Provincial Fiscal of Masbate.[8]

Accused-appellant then sought a reinvestigation of the case; this request was consequently granted. On 7 September 1987, 2nd Assistant Provincial Fiscal Jesus C. Castillo issued a resolution, duly approved by Provincial Fiscal Hermenegildo Betonio, Jr., dismissing the case for insufficiency of evidence and directing the police authorities to investigate further and gather more evidence to ferret out the real perpetrator.[9] During the said reinvestigation, Ramon Sayson testified for the prosecution.

On appeal to the Department of Justice by the offended party, however, the abovecited resolution was reversed by the then Secretary of Justice, Honorable Sedfrey A. Ordoñez, in Resolution No. 856, series of 1988, dated 15 September 1988.[10] Pursuant thereto, the Provincial Fiscal was directed to file an information for murder against accused-appellant.

On 9 November 1988, the Office of the Provincial Fiscal filed with the Regional Trial Court (RTC) of Masbate an Information[11] charging the accused-appellant with the crime of murder committed as follows:

"That on or about May 18, 1987, in the evening thereof, at Barangay Pia-ong, Municipality of Dimasalang,

Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused, with intent to kill, evident premeditation, treachery and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously, attack, assault and stab one Dante Huelva, hitting the latter on the different parts of the body, thereby inflicting wounds which caused his instantaneous death."

The case was docketed as Criminal Case No. 5557 and was assigned to Branch 45 of the court.

Upon being arraigned on 1 September 1989, accused-appellant entered a plea of not guilty.[12]

The prosecution presented Dr. Ernesto Tamayo, the Municipal Health Officer of Dimasalang, Masbate who identified the post-mortem examination report (Exhibit "A") and the death certificate of Dante Huelva (Exhibit "B"), Dominico Pangantihon, Godofreda Huelva and Cpl. Carlos Mitra as witnesses for its evidence in chief; Godofreda Huelva was recalled as a rebuttal witness. Ramon Sayson could no longer testify as he had left Dimasalang and his whereabouts remain undetermined. The defense, on the other hand, presented as witnesses for its evidence in chief Paquito Banda, George Combati, Salvacion Andueza, Miguel Andueza and the accused-appellant, who was also recalled as a surrebuttal witness.

The prosecution's evidence is succinctly summarized in the Brief for the Appellee, thus:

"On May 18, 1987, at about 6:30 o'clock in the evening, Domingo (sic) Pangantihon was on his way home from Piaong, Dimasalang, Masbate, when appellant Alberto Lase and Ramon -Sayson passed him by. At that moment, Dante Huelva was about six meters ahead of them and was urinating by the roadside. Appellant proceeded directly to the back of Dante Huelva and without any warning stabbed him once with a 7-inch long Batangas knife in the stomach. Afterwards, appellant ran away. Dante Huelva shouted for help. Ramon Sayson came to his rescue and brought him towards the Poblacion. (tsn, October 17, 1989, pp. 6-17).

Meanwhile, Godofreda Huelva, mother of the victim Dante Huelva, was on her way home to Piaong, Dimasalang, Masbate, at about 7:00 o'clock in the evening of May 18, 1987, coming from her daughter's house in Canomay, Dimasalang, Masbate, when she met Eliza Cortes who informed her that her son Dante was stabbed. She proceeded to the Dr. Alino's Hospital and found out that Dante was already dead. The following morning, Ramon Sayson told her that it was appellant Alberto Lase who stabbed Dante. (tsn, October 17, 1989, pp. 17-25).

The stabbing of Dante Huelva was reported to the Integrated National Police (INP) of Dimasalang, Masbate, on the same night of the incident. The following morning, Police Cpl. Carlos Mitra of the Dimasalang INP conducted an investigation of said stabbing incident. He investigated Ramon Sayson who disclosed that appellant was the assailant of Dante Huelva and readily identified and pointed to appellant among the persons presented in a police line-up. Ramon Sayson executed a sworn statement (Exhibit "F"). The blood-stained pants of Dante Huelva and the hole thereon (Exhibit "G") were likewise identified (tsn, January 12, 1990, pp. 2-8).

The autopsy conducted on the body of Dante Huelva by Dr. Ernesto Tamayo, Municipal Health Officer of Dimasalang, Masbate, on May 21, 1987, disclosed the following injuries sustained by the victim, to wit: (a) perforating stab wound, hand, right; (b) stab wound, 2 inches below the umbilicus, point of entrance measured 1 inch in diameter, 3 and 1/2 inches deep, penetrating the intestines; and (c) severe internal hemorrhage (Exhibit "A"), which injuries directly caused his death (Exhibit "B"). Dr. Tamayo further testified that the wounds sustained by the victim were caused by a sharp pointed instrument (tsn, October 17, 1987, pp. 2-5)."[13]

In her rebuttal testimony, Godofreda Huelva testified that accused-appellant offered to settle the case for the sum of P10,000.00. Thus:

"FERNANDEZ:

Q

Now the accused also testified that you filed this case against him because you wanted him to be paid about (sic) the death of the victim?

A

He wanted to pay me but I did not agree.

Q

You mean that he wanted to settle this case but you refused?

A

Yes, sir.

Q

How much were they offering you for this case to be settled?

A

About ten thousand."[14]

On the other hand, accused-appellant interposed the defense of alibi; he relied on the testimony of his principal witnesses to support his version that he was somewhere else and not at the scene of the crime at the time of the killing.

His version is summarized in his Brief as follows:

"Accused-appellant Alberto Lase testified that on May 18, 1987, at around 5:30 in the afternoon, he was with Miguel Andueza at the house of Kagawad Marcelo Tamayo. They waited for Artemio Andueza who was then drunk. At around 7:00 in the evening, they were fetched by Mrs. Andueza who informed them that something happened in Piaong.

On their way home, they passed by the clinic to visit Dante Huelva. He saw Juan Huelva and the policeman at the clinic. The barangay captain talked to the policeman. Dante Huelva was already dead when they arrived.

The charges levelled against him is (sic) not true. In fact, after preliminary investigation by the fiscal, the case against him was dismissed. The reason why he was implicated in this case was because Ramon Sayson told the policeman that Dante Huelva's assailant was tall and that victim's (sic) parents wanted to be paid for the death of the victim."[15]

In his surrebuttal testimony, accused-appellant vaguely denied this offer of compromise. He, however, insinuated that he could offer a higher amount:

"MEDINA:

Q

Mrs. Huelva testified here that you are offering in this case for P10,000, is that true. (sic)

WITNESS:

A

I did not say that. If that is true even P50,000 I am going to pay them."[16]

The defense also sought to discredit the testimony of Dominico Pangantihon because it was months after the incident, and only after Ramon Sayson failed to testify, that he decided to come out and testify as an alleged eyewitness to the killing.

The trial court gave full credit to the version of the prosecution and disregarded the defense of alibi in view of the positive identification of the accused-appellant and the possibility of his being at the scene of the crime at the time of its commission. Thus, in a Decision promulgated on 18 February 1991,[17] the trial court held him liable for the killing of Dante Huelva which, in view of the attendance of treachery, was qualified to murder. As earlier adverted to, the accused-appellant was sentenced to suffer the penalty of reclusion perpetua and was ordered to indemnify the parent of the victim in the amount of P30,000.00. On 21 February 1991, he filed his Notice of Appeal.[18]

In his main Brief filed on 15 September 1991,[19] accused-appellant insists on his innocence and maintains that the trial court committed the following errors:

"I

X X X IN RELYING HEAVILY ON THE INCONSISTENT AND UNRELIABLE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

X X X IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

X X X IN HOLDING THAT THE CRIME COMMITTED BY THE ACCUSED IS MURDER QUALIFIED BY TREACHERY, ALTHOUGH TREACHERY WAS NOT ALLEGED IN THE INFORMATION, AND IN HOLDING THAT NOCTURNITY IS DEEMED ABSORBED BY TREACHERY."

Being interrelated, accused-appellant discusses the first and second assigned errors jointly, unleashing the force of his arguments against the credibility of prosecution witnesses Dominico Pangantihon, who belatedly came out in the open as a witness to the incident, and Police Corporal Carlos Mitra. As to the first, accused-appellant argues that while it may be true that in a long line of cases this Court "had enunciated the (sic) credibility of the testimony of a witness who had incurred delay (sic) in reporting the crime he witnessed, it had also nevertheless ruled that:

"... the silence of an alleged eyewitness for several weeks renders his credibility doubtful x x x The long delay in reporting the crime or its author to the authorities not caused by threat, intimidation or coercion, renders the testimony untruthful. (People vs. Besa, 183 SCRA 533)."[20]

He then avers that in the instant case, the testimony of Dominico Pangantihon could not be believed because the delay of the latter in reporting the incident was not caused by threat, intimidation or coercion, but by his own fear of being implicated. Such reasoning is alleged to be unacceptable because being a barangay official (councilman) at that time, it was his duty and responsibility to report the crime. As a matter of fact, he should have apprehended the assailant who was alone at the time of the attack.

As to P/Cpl. Mitra, accused-appellant claims that said witness "incurred various glaring material inconsistencies which render his testimony doubtful and unreliable." [21] Such inconsistencies relate to the following matters: (a) whether it was accused-appellant or Ramon Sayson who was summoned to the police station for questioning, (b) whether Ramon Sayson told him that he (Sayson) could recognize the accused-appellant's face but does not know his name or did in fact mention the name of the said accused-appellant, (c) whether the holding of a police line-up was indeed reduced to writing in Sayson's sworn statement, (d) whether the murder weapon recovered from the

accused-appellant and placed inside his (Mitra's) drawer was thereafter lost or was given to Pat. Tamayo who is already deceased and (e) whether the entry in the police blotter concerning a claim of identification of the accused-appellant, in relation to the investigation of Sayson, is true.

Additionally, accused-appellant suggests that the testimonies of prosecution witnesses Dr. Tamayo and Godofreda Huelva are likewise unreliable.

In his third assigned error, accused-appellant insists that the qualifying circumstance of treachery is not alleged in the information filed by the prosecution. Moreover, nocturnity, even if considered as absorbed in treachery, was not present in this case because although the stabbing occurred at 6:30 o'clock in the evening -- considered in law to be nighttime -- there is no proof that such circumstance was especially sought or taken advantage of to facilitate the commission of the crime or ensure the assailant's escape.

The People, in its Brief[22] submitted by the Office of the Solicitor General, refutes the arguments of the accused-appellant and maintains that the latter's guilt has been proven beyond reasonable doubt; however, it agrees with the accused-appellant's observation that treachery was not alleged in the information and that nighttime was not purposely and deliberately sought. It is further alleged that indeed, "6:30 o'clock in the evening of May 18, 1987 could not be totally dark as it was summertime, when days were longer than nights, and at such time darkness could not yet have surrounded the area." [23] Thus, the Office of the Solicitor General recommends that accused-appellant should only be found guilty of the crime of Homicide under Article 249 of the Revised Penal Code. Since the aggravating circumstance of treachery, though not alleged in the information, was duly proved, and the same is not offset by any mitigating circumstance, the imposable penalty should be the maximum of the prescribed penalty -- reclusion temporal -- pursuant to Article 64 of the Revised Penal Code. Pursuant to the Indeterminate Sentence Law, it is averred that accused-appellant may then be sentenced to an indeterminate penalty of Ten (10) years of prision mayor, as minimum, to Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal as maximum. It is finally recommended that the amount of indemnity be increased from P30,000.00 to P50,000.00 in accordance with the prevailing jurisprudence.

At the bottom of the first and second assigned errors is the issue of the credibility of witnesses, a matter appropriately addressed to the trial court[24] because it is in a better position to decide the matter, having heard the witnesses and observed their deportment and manner of testifying during the trial.[25] Thus, the said court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal absent any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could have affected the result of the case.[26]

We have painstakingly examined the records of the instant case and scrutinized the transcripts of the stenographic notes of the testimonies of the witnesses and are fully convinced that the exception to the foregoing settled doctrine has not been shown to exist in this case.

The failure of prosecution witness Dominico Pangantihon to immediately report the incident certainly did not detract from his credibility. While it was his duty as a barangay official to have assumed the responsibility of reporting the incident, come to the succor of the victim or even run after and arrest the assailant, it is a sad reality that not all in our society, including many of our public officials, are imbued with the highest sense of civic duty which is necessarily expected of leaders in the community. Such indifference or apathy should not, however, cast any shadow of doubt on or impair the credibility of a person who fails to report a crime or immediately come forward to testify. The initial reluctance of witnesses in this country to volunteer information about a criminal case or their unwillingness to be involved in or dragged into criminal investigations is common.[27] Delay in itself is, therefore, not enough. It would, of course, be entirely different if it clearly appears to the trial court that

the witness himself is not credible for the rule is settled that evidence, to be believed, must not only proceed from a credible witness but must also be credible in itself.[28] Respect should not likewise be accorded to such testimony if there is proof that the said witness is influenced by improper or ulterior motives in so volunteering to testify for the victim sometime after the occurrence of the incident.

The trial court, after observing the demeanor and deportment of said witness, together with the variations in his expressions while on the witness stand -- which are badges of truthfulness[29] -- concluded that both he and his testimony are credible. Accused-appellant presents no factual bases or strong arguments to convince Us that the trial court erred in that regard. Nor has he shown any improper motive which could have impelled Dominico to testify against him or implicate him in the commission of the crime. The absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed, and that the testimony is worthy of full faith and credit.[30] For indeed, if an accused had nothing to do with the crime, it would be against the natural order of events and of human nature and against the presumption of good faith for a prosecution witness to falsely testify against the accused.[31]

The alleged contradictions or inconsistencies in the testimony of Cpl. Mitra relate to minor, if not inconsequential, matters. The rule is settled that minor inconsistencies do not affect the credibility of witnesses;[32] on the contrary, they may even heighten their credibility.[33]

Then too, accused-appellant offered to compromise the case for the sum of P10,000.00. The second paragraph of Section 27, Rule 130 of the Revised Rules of Court expressly provides that:

"In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt." [34]

Murder is not among those criminal cases which may be compromised.

As regards the third assigned error, it is clear that both the accused-appellant and the OSG may not have carefully read the Information filed in this case. Contrary to their claims, the Information does allege treachery. More specifically, it states: "x x x the said accused, with intent to kill, evident premeditation, treachery and taking advantage of nighttime, did then and there x x x." [35] The trial court likewise missed the word treachery when it quoted the Information in its decision.[36] Interestingly, the criminal complaint filed on 20 May 1987 by the INP Acting Station Commander of Dimasalang with the MCTC mentions only treachery as a qualifying circumstance. In all likelihood, either both the accused-appellant and the Office of the Solicitor General merely relied on the Information as quoted in the decision and in the Appellant's Brief,[37] or that the latter merely relied on its representation in the Appellee's Brief to the effect that the Information does not allege the qualifying circumstance of treachery. In this regard, the Office of the Solicitor General failed to exercise due care in the preparation of the Appellee's Brief, while the counsel for accused-appellant unjustly took advantage of the inadvertence committed by the trial court.

We agree with the trial court that the crime was committed with treachery because of the sudden and unexpected attack on the victim, who was then urinating at the side of the road, with a deadly 7-inch Batangas knife. Accused-appellant consciously adopted this mode of attack to facilitate or insure the commission of the crime without risk to himself arising from any defensive or retaliatory act on the part of the victim.[38]

We likewise agree with the conclusion of both the accused-appellant and the Office of the Solicitor General that evident premeditation was not duly established by the prosecution.

The penalty prescribed for murder under Article 248 of the Revised Penal Code is reclusion temporal in its

maximum period to death, a penalty which consists of three (3) periods.[39] There being neither generic aggravating nor mitigating circumstances present, the imposable penalty is the medium period of the prescribed penalty -- reclusion perpetua.[40] The trial court is therefore correct. However, conformably with the prevailing jurisprudence, the indemnity should be increased from P30,000.00 to P50,000.00.

WHEREFORE, except for the above observations with respect to the aggravating circumstance of nighttime, and the modification of the indemnity which is hereby increased from P30,000.00 to P50,000.00, the challenged Decision of Branch 45 of the Regional Trial Court of Masbate in Criminal Case No. 5557 finding the accused-appellant ALBERTO LASE, alias "BERT" guilty of the crime charged, is hereby AFFIRMED.

Costs against the accused-appellant.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records, 166-172. Per Judge Gil P. Fernandez.

[2] Id., 171.

[*] Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave.

[3] Original Records, 1

[4] Exhibit "F"; Id., 6-7.

[5] Exhibit "E"; Id., 5.

[6] Id., 7.

[7] Id., 17.

[8] Id., 18.

[9] Exhibit "1"; Original Records, 75-77.

[10] Id., 71-74.

[11] Id., 1.

[12] Original Records, 30.

[13] Brief for the Appellee, 2-5; Rollo, 41, et seq.

[14] TSN, 8 June 1990, 14.

[15] Brief for Appellant, 10; Rollo, 34, et seq.

[16] TSN, 8 June 1990, 15.

[17] Rollo, 166-172.

[18] Original Records, 174.

[19] Rollo, 34, et seq. (unpaginated).

[20] Brief for Appellant, 13.

[21] *Id.*, 14.

[22] Rollo, 41, et seq. (unpaginated).

[23] Brief for Appellee, 14.

[24] *People vs. Verzo*, 65 SCRA 324 [1975].

[25] *People vs. Garcia*, 89 SCRA 440 [1979]; *People vs. Bautista*, 92 SCRA 465 [1979]; *People vs. Abejuela*, 92 SCRA 503 [1979]; *People vs. Pido*, 200 SCRA 45 [1991].

[26] *People vs. Gonzaga*, 77 SCRA 140 [1977]; *People vs. Oñate*, 78 SCRA 43 [1977]; *People vs. Ramos*, 167 SCRA 476 [1988]; *People vs. Payumo*, 187 SCRA 64 [1990]; *People vs. Vocente*, 188 SCRA 100 [1990]; *People vs. Sanchez*, 199 SCRA 414 [1991]; *People vs. Atilano*, 204 SCRA 278 [1991].

[27] *People vs. Delfin*, 2 SCRA 911, 918 [1961], citing *People vs. Villamin*, 64 Phil. 880, 885 [1937]; *People vs. Kipte*, 42 SCRA 198 [1971].

[28] *People vs. Dayag*, 56 SCRA 439 [1974]; *People vs. Marti*, 193 SCRA 57 [1991].

[29] *Maravilla vs. Maravilla*, 37 SCRA 672 [1971]; *People vs. Tumulip*, 60 SCRA 303 [1974].

[30] *People vs. Sawah*, 5 SCRA 385 [1962]; *People vs. Valera*, 5 SCRA 910 [1962].

[31] *People vs. Balili*, 92 SCRA 552 [1979].

[32] *People vs. Genoguin*, 56 SCRA 181 [1974]; *People vs. Pacala*, 58 SCRA 370 [1974]; *People vs. Verzo*, 65 SCRA 324 [1975]; *People vs. Cabiling*, 74 SCRA 285 [1976]; *People vs. Mahinay*, 80 SCRA 273 [1977]; *People vs. Abejuela*, *supra.*; *People vs. Belibet*, 199 SCRA 587 [1991].

[33] *People vs. Reyes*, 69 SCRA 474 [1976]; *People vs. Castañeda*, 93 SCRA 56 [1979]; *People vs. De los Reyes*, 203 SCRA 707 [1991].

[34] See, *People vs. Sope*, 75 Phil. 810 [1946].

[35] Original Records, 1.

[36] Page 1 of Decision; *Id.*, 166.

[37] Pages 1 and 2 thereof; unpaginated in the rollo.

[38] *People vs. Besana*, 64 SCRA 84 [1975]; *People vs. Samonte*, 64 SCRA 319 [1975]; *People vs. Tiozon*, 198 SCRA 368 [1991]; *People vs. Lacao*, 201 SCRA 317 [1991].

[39] Article 77, Revised Penal Code.

[40] Article 64(1), *Id.*

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