

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEOLITO ROSALIJS AND ROBERT BILAN, DEFENDANTS- APPELLANTS.

G.R. No. 98253. November 25, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

Deolito Rosalijos and Robert Bilan were charged with the crime of murder in an information filed on January 23, 1989 which reads as follows:

"That on or about the 15th day of January 1989, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one (1) John Doe whose true name and present whereabouts is still unknown and the three (3) of them mutually helping and aiding one another, with intent to kill and with evident premeditation and by means of treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab with double bladed knife, one Bayani Latayan, thereby inflicting upon the latter serious and mortal stab wound which directly caused his death." [1]

Assisted by counsel de oficio, both accused entered a plea of not guilty upon arraignment.[2] Trial ensued thereafter.

The deceased Bayani Latayan, his common-law wife Elizabeth and their thirteen-year-old son Miguelito lived on the ground floor of a two-storey wooden house owned by a certain Aling Puring in Pulo, Barangay Talon IV, Las Piñas, Metro Manila. At about 3:00 o'clock in the morning of January 15, 1989, while Latayan was in bed and Miguelito was asleep on the floor near the door, Elizabeth was awakened by someone knocking at the door and calling out her husband's name. She also heard footsteps outside the house. Although she was afraid, she did not wake up her husband as he had had a drinking spree with their kumpadres the day before.

Unable to go back to sleep, Elizabeth woke her husband an hour later when she heard people upstairs moving about and someone taking a bath outside the house. She then told him what she had heard earlier. Looking out of the window, she saw their neighbor Boy and his wife Gina taking a bath. Since they had no toilet inside the house, she started to go out of the house to answer the call of nature. As she was opening the door, the same was pushed from the outside and she was thrown to a distance of about two (2) arms' length.

Suddenly, two (2) persons entered their house, went directly to where her husband was lying down and repeatedly stabbed him. Almost simultaneously, someone met her by the door and poked a knife at her neck, thereby preventing her from going out. As their house was lighted by a gasera, she was able to identify the person who stabbed her husband as Robert Bilan and the person who poked a knife at her as Deolito Rosalijos. Then she heard gunshots and the three (3) men scampered away. Her husband was brought to the hospital but he was pronounced dead on arrival.[3] The certificate of postmortem examination issued by Dr. Alberto Reyes of the Medico-Legal Section of the National Bureau of Investigation indicates that 42-year-old Latayan died due to multiple stab wounds.[4]

Miguelito Latayan corroborated his mother's testimony. As he was sleeping on the floor, he was awakened when Bilan, who was on his way to the room, stepped on him. It was Rosalijos, however, who prevented him from going out of the house. He heard his father fire his gun as the intruders were running away.[5]

A balut vendor reported the incident to the police. Responding to the report, Cpl. Angel Habacon, Pfc. Lorenzo Vardida, Patrolmen Bennezer Gonzalez, Efren de Guzman, Ernesto Martos and Rodolfo Jabonete boarded their mobile Sarao jeep and headed for Pulo, Equitable Village, Talon. While they were traversing Equitable Road, they spotted Rosalijos and Bilan who fled upon seeing them. The police chased and apprehended them. Cpl. Habacon and his men saw that there was blood on the clothing of the two men they had accosted and Bilan was wounded on the left arm. They found a knife in a scabbard in the possession of Rosalijos. They brought the two men to the police substation after taking Bilan to the hospital for treatment.[6]

That same day, Cpl. Leopoldo B. Africa took the statements of Elizabeth and Miguelito Latayan while that of Bilan was taken the following day with the assistance of Atty. Conrado P. Ramos.[7]

The defense presented an entirely different version of the incident. Bilan tried to prove that he had acted complete self-defense. For his part, Rosalijos claimed that he had no participation in the killing of Latayan.

According to Bilan, in the afternoon of January 15, 1986,[8] he and his friend Rosalijos, visited his aunt Edith Basas in Pulo, Talon, Las Piñas as she had just been discharged from the hospital. At about 5:30 in the afternoon of the same day, Bayani Latayan poked a gun at Edith who was then on her way home from a nearby store where she bought soft drinks for her visitors and asked, "Sino ka bang pagalagala?" Edith responded, "Huwag po kagagaling ko lang sa hospital baka mabinat ako." Bilan saw all these and reacted by saying, "Huwag pare baka mabinat ang tiyahin ko kagagaling lang niya sa hospital." Latayan left with the parting words, "Pasensiya ka na. Sa susunod makukuha din kita, iyong pinagmamalaki mo." [9]

Edith advised Bilan and Rosalijos not to leave. She expressed apprehension that the toughies in the neighborhood might maul them should they leave that day. Hence, they spent the night in her house.

Since he carried the keys to the warehouse of the project where they were working, Bilan left his aunt's place at about 4:00 in the morning, ahead of Rosalijos. While he was passing in front of Latayan's house, he was suddenly fired at and hit on the left arm by Latayan. He pulled out his Swiss knife when Latayan approached him and expressed his intention to finish him off. Grabbing Latayan's arm, he stabbed the latter three (3) times on the chest. As Latayan's friends ran after him, he fled in the direction of the highway where Rosalijos caught up with him. They were on their way to the hospital when Cpl. Angel Habacon arrested them.[10]

Bilan admitted the signature on his written statement as his[11] but denied the contents thereof, alleging that he was merely asked to sign the same.[12]

Rosalijos corroborated the testimony of Bilan[13] but claimed that Edith Basas was his aunt.[14] Edith Basas, in turn, corroborated the testimonies of Bilan and Rosalijos but alleged that Rosalijos was her nephew while Bilan was just the friend of Rosalijos.[15] She learned of the shooting incident when she heard her neighbor Josephine Romero shout, "Ate Edith, yung pamangkin mo nabaril!" referring to Bilan.[16]

Josephine Romero, in corroborating the testimony of Bilan, said that in the morning of January 15, 1989, while she was fetching water from the artesian well, she saw Latayan with a gun in his hand, going in and out of his yard as if waiting for somebody. When Bilan was in front of the house of Latayan, the latter suddenly shot the former, hitting him on the left arm.[17]

On March 28, 1990, the trial court rendered a decision[18] finding the accused guilty beyond reasonable doubt of

murder. Its decretal portion reads:

"WHEREFORE, premises considered, the Court finds the accused, Robert Bilan and Deolito Rosalijos, guilty beyond reasonable doubt of the crime of Murder charged in the information and hereby sentences them to suffer the penalty of Reclusion Perpetua or life imprisonment, and to pay unto the heirs of the deceased, Bayani Latayan, the following:

1. P30,000.00, as indemnification for consequential damages; and
2. P15,739.40, as actual damages; and
3. The costs of this suit.

SO ORDERED."

From said decision, Bilan and Rosalijos appealed, contending that the lower court erred in: (a) not giving credence to Bilan's claim of self-defense and Rosalijos' assertion of nonparticipation in the killing; (b) giving credence to the prosecution's version of the crime although it is replete with "irreconcilable inconsistencies, contradictions and/or improbabilities," and (c) admitting evidence obtained in violation of the constitutional rights of the accused, particularly Exhibits "D" and "E".

During the pendency of this appeal or on August 17, 1990, 25-year-old appellant Bilan died of "septicemia secondary to retropharyngeal abscess" at the National Bilibid Prison Hospital.[19] Thus, on August 3, 1992, after the death of appellant Bilan had been verified, the Supreme Court, in a resolution dated August 3, 1992 resolved "to dismiss the case as to the criminal liability of accused Robert Milan (sic) and to order the substitution of his heirs as to the civil liability." [20] However, in light of our recent ruling in *People of the Philippines v. Rogelio Bayotas y Cordova*, [21] where we ruled that death of the accused pending appeal of his conviction extinguishes, not only his criminal liability, but also his civil liability *ex delicto*, the appeal of appellant Bilan, now deceased should be dismissed both as to the criminal and civil aspects thereof.

Consequently, only the appeal of appellant Rosalijos is left for our determination. In his appeal, it is appellant Rosalijos' assertion that he had no participation in the killing of Latayan. However, a mere denial constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. [22] Elizabeth and Miguelito Latayan positively identified Rosalijos as the one who prevented them from leaving the room by pointing a knife at Elizabeth's neck while appellant Bilan and an unidentified man were repeatedly stabbing Latayan. As between these positive and categorical testimonies which have the ring of truth and appellant's bare denial, the former is generally held to prevail. [23] Consequently, appellant Rosalijos' denial of participation in the crime charged, standing alone, cannot prevail over the positive statements by Elizabeth and Miguelito that it was he who held them at bay while two others committed the dastardly act against Latayan.

Appellant Rosalijos' act of preventing Elizabeth and Miguelito from leaving the house manifested his concurrence with the intention of appellant Bilan to kill Latayan. Thus, his conviction likewise of murder is proper because there is proof beyond reasonable doubt that the appellants acted in concert, each doing his part to fulfill the common design to kill the victim. [24]

As regards the defense's contention that the version of the prosecution is replete with inconsistencies and contradictions, we find the alleged inconsistencies in the testimonies of the prosecution witnesses to be minor or so inconsequential as not to diminish their credibility. Minor inconsistencies may even indicate truthfulness. [25] The reason for this is that different persons who witness a particular incident may not perceive it in exactly the same manner and from the same vantage point. It is, therefore, natural that they may disagree on minor matters.

What is important is their consistency in relating the significant and essential components of the principal occurrence and their identification of the appellants as the assailants of the victim.[26] Thus, although there were inconsistencies between the sworn statements and testimonies of witnesses Elizabeth and Miguelito Latayan, they are agreed on principal points, such as the fact that appellant Bilan and an unidentified man stabbed Latayan while appellant Rosalijos prevented them from leaving their house and calling for help. Since there is nothing on the record that would indicate that Elizabeth and Miguelito had any improper motives to falsely impute an offense as serious as murder on the appellants, the undisputed presumption, therefore, is that their testimonies are true and entitled to full faith and credit and that they had no other motive than to tell the truth and aid in the administration of justice.[27]

Likewise, we do not find merit in appellant's contention that the trial court erred in admitting in evidence Exhibits "D" and "E", consisting of the sworn statements of the apprehending police officers and appellant Bilan who allegedly executed it in violation of his constitutional rights as an accused. Suffice it to state that while the trial court quoted at length appellant Bilan's statement admitting culpability for the killing of Latayan,[28] such statement was clearly not the principal or sole basis for convicting the appellants. The straightforward testimonies of Elizabeth and Miguelito were sufficient bases for conviction.

The trial court did not err in finding appellant guilty beyond reasonable doubt of committing the crime of murder under Art. 248 of the Revised Penal Code as the crime was qualified by treachery. Treachery was evidenced by the manner by which they suddenly and unexpectedly attacked the victim to ensure the accomplishment of their evil purpose.[29] While Latayan was able to wound one of his attackers, this fact does not detract from the treacherous manner adopted by the appellants in attacking the victim. They barged into his abode before dawn and while he was still in bed. This was testified to by prosecution witnesses Elizabeth and Miguelito.[30]

Evident premeditation, however, which was alleged as an aggravating circumstance in the information, had not been established. On the other hand, as earlier noted, conspiracy was shown by the concerted acts of appellant Rosalijos who prevented Elizabeth and Miguelito from repelling the attack or seeking help from their neighbors while Bilan and another companion stabbed Latayan. Consequently, the act of Bilan and his companion became the act of Rosalijos.[31]

There being no mitigating or generic aggravating circumstances, the imposable penalty, in accordance with Articles 248 and 64 (1) of the Revised Penal Code[32] would be in the medium period, i.e. reclusion perpetua[33] which the trial court correctly imposed upon the appellant. However, the trial court is reminded that the penalty of reclusion perpetua is not synonymous with "life imprisonment." These penalties are distinct from each other as to nature, duration and accessory penalties.[34] It was, therefore, erroneous for the trial court to sentence the accused to "Reclusion Perpetua or life imprisonment" as it appears in the dispositive portion of its decision.

WHEREFORE, the appeal of appellant Robert Bilan is hereby **DISMISSED**; the decision of the lower court finding appellant Deolito Rosalijos guilty beyond reasonable doubt of the crime of murder for the killing of Bayani Latayan and imposing on him the penalty of reclusion perpetua is hereby **AFFIRMED** subject to the modification that the indemnity to be paid to the heirs of Bayani Latayan be increased to P50,000.00, in accordance with a growing line of jurisprudence.

SO ORDERED.

Bidin, (Acting Chairman), Melo, and Vitug, JJ., concur.
Feliciano, J., on leave.

- [1] Criminal Case No. 751, Records, p. 1.
- [2] Ibid, p. 13.
- [3] TSN, May 10, 1989, pp. 1-4.
- [4] Exh. "F".
- [5] TSN, May 10, 1989, pp. 9-14.
- [6] Ibid, pp. 15-18.
- [7] Twenty-four-year-old Bilan, a bodegero, admitted in his sworn statement that he and Rosalejos (sic) were members of the New People's Army under Kumander Eric; that he became a member of the organization in Masbate in 1984; that he and Rosalijos killed Latayan in pursuit of their mission as members of the New People's Army to help other people, and that they intended merely to enlighten ("paliwanagan") Latayan and not to kill him but the latter stole the gun ("inunahan"), so to speak, from them (Exh. "E").
- [8] In his later testimony, Bilan corrected himself by stating that he went to his aunt's house on January 14, 1989 and was apprehended the following day, January 15, 1989 (TSN, June 9, 1989, p. 4).
- [9] TSN, June 7, 1989, pp. 6-7.
- [10] Ibid, pp. 3-12.
- [11] Exh. "E".
- [12] TSN, June 9, 1989, pp. 9-10.
- [13] Ibid., pp. 12-14; TSN, July 7, 1989, pp. 3-11.
- [14] Ibid, p. 16.
- [15] TSN, August 23, 1989, p. 4.
- [16] Ibid, pp. 12-13.
- [17] TSN, August 28, 1989, pp. 2-5.
- [18] Penned by Judge Manuel M. Cosico.
- [19] Rollo, p. 55.
- [20] Ibid, p. 60-A.
- [21] G.R. No. 102007, September 21, 1994.
- [22] People v. Bautista, G.R. No. 102618, October 12, 1993, 227 SCRA 152, 160.
- [23] Ibid.
- [24] People v. Deuna, G.R. No. 87555, November 16, 1993, 227 SCRA 788, 801.
- [25] People v. Collantes, G.R. No. 97146, May 8, 1992, 208 SCRA 853, 857.
- [26] People v. Briones, Jr., G.R. No. 101257, September 23, 1993, 226 SCRA 675, 680; People v. Fabros, G.R. No. 90603, October 19, 1992, 214 SCRA 694, 697-698.
- [27] People v. Lizada, G.R. No. 97226, August 30, 1993, 225 SCRA 708, 713.

[28] Decision, pp. 5-7.

[29] *People v. Villagracia*, G.R. Nos. 82727-28, April 7, 1993, 221 SCRA 136, 144.

[30] See: *People v. Salvador*, G.R. No. 101215, July 30, 1993, 224 SCRA 819, 826 where the Court held that where there is no proof as to how the attack commenced, treachery cannot be appreciated.

[31] *People v. De la Cruz*, G.R. Nos. 101000-01, October 18, 1993, 227 SCRA 278, 284.

[32] Arts. 248 and 64 (1), Revised Penal Code.

"ART. 248 Murder. - Any person who, not falling within the provisions of article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment of or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceeding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

ART. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period."

[33] Arts. 248 and 64 (1), Revised Penal Code.

[34] *People v. Mejorada*, G.R. No. 102205, July 30, 1993, 224 SCRA 837.

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