

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NATHANIEL PONSARAN AND ARIEL PONSARAN (AT LARGE), ACCUSED.

G.R. Nos. 139616-17. February 06, 2002

Ponente: PUNO, J.

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PUNO, J.:

Appellant Nathaniel Ponsaran appeals from a judgment in Criminal Cases Nos. 47916 and 47917 of the Regional Trial Court of Iloilo City^[1] convicting him of Murder and Attempted Homicide.

He, along with his co-accused brother Ariel Ponsaran, was charged with the crime of Murder in an Information which reads:

“That on or about the 15th day of May, 1997, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, herein accused armed with guns, conspiring, confederating and helping one another, with treachery and evident premeditation with a decided purpose to kill, did then and there willfully, unlawfully, and criminally shoot, hit and wound Balerio Padernal Jr. with said guns, which the accused were provided at the time, thereby causing upon said Balerio Padernal Jr. injuries on vital parts of his body which caused his instantaneous death.

Contrary to law.”^[2]

A second Information likewise accuses them of Attempted Murder, committed allegedly as follows:

“That on or about the 15th day of May, 1997, in the city of Iloilo Philippines and within the jurisdiction of this Honorable Court, herein accused, conspiring, confederating and helping one another, armed with guns, with treachery and evident premeditation, with a decided purpose to kill, did then and there willfully, unlawfully, and criminally shoot Rose Padernal with the said gun which the accused were provided at the time: thus the accused have commenced the commission of the crime of murder directly to overt acts but did not perform all the acts of execution which would have produced the felony, as a consequence by reason of some cause or accident other than the spontaneous desistance of the accused.

Contrary to law.”^[3]

The two criminal actions were jointly tried. The cases proceeded only against appellant since his co-accused brother, Ariel Ponsaran, remains at large. Upon arraignment, Nathaniel, duly assisted by counsel, pleaded “not guilty” to both charges. Trial ensued.

From the evidence adduced by the prosecution,^[4] it appears that at about 4:00 o’clock in the afternoon of May 15, 1997, Rose Padernal was with her son Webster, who was waiting for her husband, the deceased Balerio Padernal Jr., at the gate of their house on Huervana St., La Paz, Iloilo City. After a few minutes, Rose saw her husband approaching them. Suddenly, from a bamboo fence approximately seven meters from where she was, the accused-appellant Nathaniel Ponsaran emerged. The latter shouted to Balerio, “Here’s what you’re looking for,

Bong (the victim's nickname)!" and simultaneously fired at him using a short firearm. Balerio, who turned to his left upon hearing the shout, was hit by a bullet in his left cheek and fell to the ground. Rose immediately ran to her fallen husband. She yelled at Nathaniel in disbelief, "Why is it that you shot him?" Instead of answering, Nathaniel pointed the barrel of the gun he was holding at her and squeezed its trigger. For some reason, it did not fire. He then told her, "Calm down, Nick (the nickname of Rose)." Out of fear, she stepped back. Thereafter, Ariel Ponsaran, the brother of Nathaniel, likewise appeared from where his brother had emerged earlier. He went straight to the fallen victim and at a distance of about one arm's length from Balerio, fired his shotgun at him, hitting him at the back of his head. As if not satisfied with the brutality they had just committed, they took turns in kicking his body before turning it over to make sure he was dead. Certain that they had achieved their purpose, the brothers fled.

With the two gone, Rose proceeded to cradle the profusely bleeding body of her fallen husband. There, in a scene reminiscent of pieta, she cried for help as she cuddled the victim on her lap. Nobody came until after a few minutes, when a good samaritan volunteered to help bring Balerio to the St. Paul's Hospital. Unfortunately, he was declared dead on arrival.

About one week before his death, Balerio mentioned to Rose about a threat the brothers made. They cautioned him not to blow the whistle on their illegal business. It appears that the Ponsarans suspected him of being a police informant. This incident was not reported to the law-enforcement agency. There was a second threat from Nathaniel, Rose added. During the wake for Balerio, he threatened to throw a grenade therein.

Balerio died at the age of 31, leaving behind his spouse Rose and their two young boys aged 5 and 2. He was in the pink of health at the time of his death. While he just got laid off from his job with the Coca-Cola Bottling Co., he was earning from the sari-sari store and boarding house he was able to put up with his income from previous jobs. The net income from the sales amounts to more than P2,000.00 a month, while the rent from the house totals P3,000.00. Their family spent P100,750.00 for the funeral and burial expenses,[5] P14,250.00 for the tomb,[6] and P15,000.00 for funeral services.[7]

Dr. Tito Doromal, the medico-legal officer of the PNP Police Station, Iloilo City, conducted an autopsy on the cadaver of the victim, and prepared the corresponding Autopsy Report[8] dated May 16, 1997.[9] His findings indicate that the victim suffered multiple pellet wounds and a bullet wound. The direction of the wounds caused by the pellets was forward, slightly upward, while that caused by the bullet was backward, slightly upward, medially. The cause of the victim's death was the maceration and laceration of the brain secondary to the various wounds.

Nathaniel Ponsaran anchored his defense on alibi and denial. He was the lone witness presented to prove his innocence. He testified[10] that on the afternoon of May 15, 1997, the day of the incident, he was inside his house playing with his children. Hearing three loud explosions from the outside, he went to the place where he thought the sound came from. There, he saw a person clothed in long sleeves shirt and wearing Rayban sunglasses kick Balerio, who was lying face downward. He did not know who that person was. He added that he could not recognize the assailant whose back was facing him. He shouted to the unknown person, "What is that?" and this forced the latter to run. He noticed that there was no other person present at that time, including Rose and her baby child. Out of fear, he returned home.

He declared that from the time the incident happened up to the time he was accosted by police authorities, he never changed his residence and continued to work as a watch repairman in a shop at La Paz market with his father. If there were policemen who came to his house to effect his arrest, his wife did not inform him about it. He further asserted that he has no grudge against the victim. He admitted, though, that he never informed Rose about

what he witnessed.

On rebuttal, two police officers were called by the prosecution to show that from the time of the incident up to the time of his arrest, Nathaniel has stopped residing, and could no longer be located, at his known address. SPO1 Eduardo Sajonia, the Process Server, Subpoena Section of the La Paz, Iloilo City PNP, testified[11] that in connection with the preliminary investigation of this case, he was ordered to serve the subpoena on Nathaniel. When he went to his house, he was told by Nathaniel's mother-in-law that he no longer resided there. In a similar vein, SPO3 Edwin Jover, Chief of the Warrant Section of the La Paz PNP, declared[12] that on three occasions, he attempted to cause the arrest of the accused. The efforts proved futile since he could not find Nathaniel in his address and was even told by neighbors that the latter, indeed, no longer dwells in the house specified on the warrant.

After evaluating the conflicting evidence of both sides, the court a quo opted to believe the prosecution. It rendered a Decision convicting the appellant of Murder and Attempted Homicide, the dispositive portion of which states:

“WHEREFORE, PREMISES CONSIDERED, and in the light of the facts obtaining and jurisprudence aforecited, judgment is hereby rendered finding the accused Nathaniel Ponsaran GUILTY of the crime of Murder with the attendant qualifying circumstance of treachery, hereby sentencing the aforementioned accused with the penalty of RECLUSION PERPETUA, and to pay the wife of the victim P30,000.00 as moral damages; and P50,000.00 as death compensation.

The same accused is likewise found guilty beyond reasonable doubt hereby sentencing said accused of the crime of attempted homicide hereby sentencing said accused of an indeterminate penalty of imprisonment of Four (4) months and Twenty-one (21) Days of Arresto Mayor as MINIMUM to Four (4) years and Two (2) Months of Prison Correctional as MAXIMUM.

SO ORDERED.”[13]

Taking vigorous exception to the guilty verdict, appellant interposed the present appeal, arguing that “(t)he trial court erred in convicting (him) on the manifestly incredible testimony of a false eyewitness.”[14]

We find no merit in the appeal.

In support of his assigned error, appellant impugns the testimony of Rose Padernal as incredible. He finds it hard to believe that set in the background of a thickly populated barrio, the murder of the victim would yield no witness other than his widow. He claims that granting in gratia argumenti that it was he and his brother who authored the killing, it is improbable that it was only Rose who saw the entire event.

The argument fails to impress. To begin with, the matter of population density of the crime scene was merely an unverified allegation by the appellant in his Brief. Never was it proven during the whole course of the trial that the place at that time was bursting with people.

In addition, appellant wrongly assumes that it was Rose who was the sole eyewitness to the incident. Her presentation by the prosecution as its sole eyewitness during the trial should not be interpreted of necessity that no other individual within the vicinity saw what came to pass. It is understandable that other persons who happened to be there might just have been afraid, in a manner of speaking, to stick their necks out. The natural tendency of people is to stay out of trouble. This could well explain why it took sometime before a neighbor lent his hand in bringing the victim to a hospital. This attitude should explain why other possible eyewitnesses were not willing to step forward. Some people consider involvement in court actions with reluctance if not opposition. Such natural reticence and abhorrence have been recognized by courts.[15]

At any rate, the prosecution is under no duty to present a definite number of witnesses. The discretion to decide whom it wants to call to the stand lies with the prosecution. It is axiomatic that witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable for there is no law which requires that the testimony of a single witness needs corroboration except where the law expressly mandates otherwise. The short point is that Rose's presentation during the course of the trial as the sole eyewitness to the whole event should not by itself erode her credibility.

It is worthy to note that Rose testified with candor and consistency in recounting the material events of the crime. A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[16] She declared in unequivocal terms how she saw, from a distance of approximately five to six meters, the appellant suddenly emerge from a bamboo fence near their house to shoot her husband from behind without any provocation and warning. She was very categorical and positive, not only in naming the accused and his brother as the perpetrators of the killing, but also in narrating the particularities of the criminal incident, thus:

“Q

While you were waiting for your husband to arrive at the usual hour of the day, what happened?

A

I saw my husband approaching our house.

Q

How far were you from your husband who was walking towards your house the first time you saw him?

A

About 5 to 6 meters.

Q

At that distance of about 5 to 6 meters when you saw your husband proceeding towards your house, what happened next?

A

Nathaniel immediately appeared from the bamboo.

Q

You said you saw this Nathaniel, you are referring to the accused, Nathaniel Ponsaran?

A

Yes, Ma'am.

Q

Coming suddenly from a bamboo, what is that bamboo?

A

Used as fence and the place where they usually stock charcoal.

x x x x x x x x

Q

When he suddenly emerged from that enclosure, what did he do, if any?

A

He shouted, “Here is what you are looking for, Bong!”

Q

When he mentioned the name “Bong”, to whom was he referring to?

A

My husband Balerio Padernal, Jr.

x x x x x x x x

Q

And what happened next?

A

He shot him simultaneously.

Q

You mean to say he shot your husband simultaneously after he shouted, “Here’s what you are looking for, Bong!”

A

Yes, Ma’am.

Q

When he shouted at your husband and simultaneously shot him, where was this Nathaniel Ponsaran in relation to your husband.

A

At the back.

Q

What did your husband do, if any, when Nathaniel Ponsaran shouted at him and shot him?

A

He was able to turn back.”[17]

The autopsy done on the cadaver of the deceased dovetails with the above-quoted testimony. It reveals that the victim suffered from two kinds of wounds which caused his instantaneous death: one bullet wound and a set of multiple pellet wounds. This corroborates the account of Rose that her husband was shot twice by two different assailants utilizing two different weapons. It will be recalled that she narrated how she saw appellant shoot Bong with a handgun before his co-accused brother came and fired at him with a shotgun. Deformed pellets were recovered from the head of the victim as well as a single deformed slug. The discovery that the victim suffered various “contused-abrasions” in his face supports the declaration that the victim fell face first on the road after being shot by the appellant.

The test of credibility of a witness is when his testimony is in accord with the ordinary experience of men. We find nothing supernatural or extraordinary in the testimony of Rose. Tragic as the story ended, it is not uncommon to see someone shooting his own neighbor. Especially when that culprit entertains a motive for the act such as in this case where appellant suspects the victim of being a police informant of their illegal activity. So, too, is it not unusual for a victim to be killed right in front of his home and in broad daylight. As to the fact that Rose survived this incident virtually unscathed, which appellant incidentally frets about, we note two things. It is not beyond the realm of the probable that Nathaniel’s gun jammed when it was fired. That Ariel Ponsaran, on the other hand, did not make a similar attempt on the life of Rose simply manifests a lesser criminal depravity on his part.[18]

One thing which bolsters her credibility is the fact that Rose has no motive to prevaricate against the appellant. Where there is no evidence to show any dubious or improper reason why a prosecution witness should testify falsely against the accused or falsely implicate him in a heinous crime, his testimony is worthy of full faith and credit.[19]

On the other hand, her personal interest in securing the conviction of the guilty should deter Rose from implicating persons other than the culprits; otherwise, the conviction of the innocent would thereby afford immunity to the guilty.[20] Rose’s relationship to the victim should make her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[21]

To be sure, settled in this jurisdiction is the rule that the task of assigning values to the testimonies of witnesses and their credibility is best left to the trial court which forms its firsthand impressions as a witness testifies before it.[22] Its evaluation of a testimony is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.[23] This opportunity enables the trial judge to detect better that thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernable from a mere reading of the personal record of a reviewing court.[24]

Appellant also puts Rose to task for throwing away her blood-drenched clothes which are of high evidentiary value. The clothes would have been the most telling proof of her presence during the incident and that she truly cradled her dying man on her lap. Allegedly, the failure of the prosecution to present these clothes should establish in one's mind the inference that there were no clothes, precisely because Rose was never there.

The argument fails to pass judicial muster. Apropos, on this score, is the convincing disquisition of the Solicitor General, viz:

“The non-presentation of the clothing of Rose Padernal which was stained by her husband's blood cannot be construed as an indication that she was not present at the scene of the crime. Rose Padernal gave a simple and practical explanation:

“Q:

Where are those clothes?

A:

They (sic) threw it because it can not be washed.”

Besides, no one advised Rose Padernal to keep the blood-stained clothing as possible evidence during the trial of the criminal case. Being a lay person, she cannot be expected to have the legal foresight to keep the said clothing as additional evidence that she was really present when her husband was fatally shot.”[25]

In fact, this lack of “legal foresight” shows when she tried to wash the clothes. For if she were thoroughly aware of their value in court, then they would not have found their way to the laundry bag.

The litany of alleged incongruities cited by the accused are insignificant. They refer to collateral themes which obviously are irrelevant to the crime charged. They deserve scant consideration from this court. That Rose made a mistake in reporting the correct distance of Nathaniel's house from the fence where he suddenly emerged, is clearly of no great import. We take note of the fact that ordinary people have difficulty in approximating the accurate distances between places. Likewise, contrary to appellant's asseverations, Rose was not being untruthful in disclosing the true age of her son Webster. The apparent disparity arose merely from a misapprehension of questions propounded to her, which resulted in the variance of answers. In the first part of her testimony, Rose was referring to the boy's age at the time the incident transpired, while in the second part of her testimony, she was referring to his age the time she was testifying. Lastly, whatever inconsistency she made with respect to where she placed her son after the victim was shot, and to whether Nathaniel tried to shoot him first before telling her to calm down, or the other way around, is understandable. Faced with a startling occurrence as the shooting of her husband right before her very eyes, it can hardly be expected of her to remember these minute details. The trauma and distress of the experience likely caused her to be desensitized to minor matters. At that point, it may very well be that the only things which occupied her mind were the crime and the condition of her husband.

It bears reiteration that inconsistencies and lapses in the testimony of a witness with respect to minor details and secondary matters do not affect its substance.[26] They cannot have any adverse impact on the categorical and straightforward declarations of Rose. Minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed.[27] They do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.[28]

Well to stress, even the most truthful witnesses can make mistakes, but minor lapses do not necessarily affect their credibility.[29] A truth-telling witness is not always expected to give an error-free testimony, considering the

lapse of time and the treachery of human memory.[30] We have stated time and again that minor blunders and inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable.[31]

In stark contrast to the convincing recital of facts in Rose's testimony is Nathaniel's weak alibi. Alibi, as a defense, is viewed with disfavor by courts due to the facility with which it can be concocted.[32] It is a cardinal rule that for it to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.[33] An element of alibi, physical impossibility, refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[34] Where it was possible for the accused to have been at the crime scene even as he claimed that he was elsewhere at the time of the killing, the defense of alibi must fail.[35]

The defense utterly failed to show that it was physically impossible for Nathaniel to have been at the locus criminis at the time of the alleged crime. From his own testimony, he admitted that at the time of the shooting, he was playing with his children at his house, which is just a stone's throw away from the scene of the crime. It is barely twenty meters away. Significantly, his own version of the story stated that he was able to proceed to the crime scene at more or less the approximate time of the shooting. Hence, it was not only physically possible for him to be there as he was actually there.

More importantly, the defense of alibi forwarded by appellant must crumble in the light the positive identification made by Rose. Alibi, being a negative defense, would merit no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[36]

The designation of the crime for which appellant was convicted is finally put in issue. He maintains that he should not have been convicted of Murder qualified by treachery since no treachery attended the killing. Based on Rose's own testimony, he allegedly shouted the words, "Eto ang hinahanap mo, Bong!" to the victim. Thus, it cannot be argued that the victim was completely surprised.

The qualifying circumstance of treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make.[37] For treachery to be appreciated as a qualifying circumstance, two elements must concur: (1) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution is deliberately or consciously adopted.[38]

After a thorough perusal of the evidence on record, we agree with the trial court's conclusion that treachery attended the shooting of the victim. The prosecution sufficiently demonstrated that "the attack launched by the accused Nathaniel Ponsaran was sudden, unprovoked, unexpected and done in a manner which directly and specially insured the execution of the act without any risk to the accused Nathaniel Ponsaran arising from the defense which the victim, then unarmed, may have made." [39] The victim was on his way home. He was expecting to be greeted by his family, when the appellant suddenly emerged from a bamboo enclosure. Appellant, who was at that time already holding a gun, positioned himself at the back of the victim. From there, he promptly fired at him from behind. While he uttered the words, "Eto ang hinahanap mo, Bong!" at the same time firing at the victim, that barely warned the accused nor gave him ample period to put up even a semblance of defense. In fact, the only reaction the victim was able to make was to try to turn his face towards the direction where he heard the voice come from. Moreover, that this treacherous method was consciously adapted by the appellant is as clear as day when gleaned from the following facts: (1) he had with him a handgun; (2) he hid himself, then

unexpectedly emerged, from a deceptively strategic position; and (3) he laid in wait for the victim to arrive at the latter's house before staging an ambush when he was already near the gate.

The medical record equally supports the finding of treachery. The victim was shot from behind. The autopsy report reveals the presence of pellet wounds at the back of his head. It has been held many times that treachery exists when a defenseless victim was shot from behind, and this shows that the appellant had employed means of attack which offered no risk to himself from any defensive or retaliatory act which the victim might have taken.[40] The bullet wound located on the left part of his face, on the other hand, in no way suggests that the attack was frontal. Judging from the direction of the slug and the location of where it was found, it definitely corroborates the account that such resulted from the victim's act of turning his face.

IN VIEW WHEREOF, and finding no cogent reason to disturb the judgment of the court a quo, the appealed Decision is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Branch 23.

[2] Information, Criminal Case No. 47916, Original Records, p. 1.

[3] Information, Criminal Case No. 47917, Original Records, p. 1.

[4] Culled from the testimony of prosecution witness, Rose Padernal; TSN, June 24, 1998, pp. 1-50; July 10, 1998, pp.1-12.

[5] Exhibit H, Criminal Case Records, p. 77.

[6] Exhibit I, Id., p. 79.

[7] Exhibit J, Id., p. 80.

[8] Exhibit A, Id., pp. 85-86.

[9] TSN, June 5, 1998, pp. 1-27.

[10] TSN, July 17, 1998, pp. 1-29.

[11] TSN, August 3, 1998, pp. 1-12.

[12] TSN, August 3, 1998, pp. 12-27.

[13] Decision, p. 11; Rollo, p. 26.

[14] Appellant's Brief, p. 4 ; Rollo, p. 43.

[15] See *People v. Navarro*, 297 SCRA 331 (1998).

[16] *People v. Noay*, 296 SCRA 292 (1998).

[17] TSN, June 24, 1998, pp. 7-10.

[18] Appellee's Brief, p. 13; Rollo, p. 98.

[19] *People v. Banguis*, 291 SCRA 279 (1998).

- [20] Decision, p. 8; Rollo, p. 23.
- [21] *People v. Enciso*, 223 SCRA 675 (1993).
- [22] *People v. Ombrog*, 268 SCRA 93 (1997)
- [23] *People v. Virtucio, Jr.*, 326 SCRA 198 (2000).
- [24] *People v. Hermosa, et al.*, G.R. No. 131805, September 7, 2001.
- [25] Appellee's Brief, p. 14; Rollo, p. 99.
- [26] *People v. Ebrada*, 296 SCRA 353 (1998).
- [27] *People v. Sagun*, 303 SCRA 382 (1999).
- [28] *People v. Cristobal*, 252 SCRA 507 (1996).
- [29] *People v. Reduca*, 301 SCRA 516 (1999).
- [30] *People v. Paule*, 261 SCRA 649 (1996).
- [31] *People v. Ebrada*, *supra*.
- [32] *People v. Dacoba*, 289 SCRA 265 (1998).
- [33] *People v. Saban*, 319 SCRA 36 (1999).
- [34] *People v. De Labajan*, 317 SCRA 566 (1999).
- [35] *People v. Bitoon, Sr.*, 309 SCRA 209 (1999).
- [36] *People v. Tumaob, Jr.*, 291 SCRA 133 (1998).
- [37] Article 14, par. 16, Revised Penal Code.
- [38] *People v. Tavas*, 303 SCRA 86 (1999).
- [39] Decision, p. 8; Rollo p. 23.
- [40] *People v. Apolonia*, 235 SCRA 124 (1994).

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