

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LARRY CARITATIVO ALIAS “LARRY,” APPELLANT.

G.R. Nos. 145452-53. June 10, 2003

Ponente: CORONA, J.

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CORONA, J.:

Before us on automatic review is the decision,[1] dated May 12, 2000, of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4112, finding the appellant, Larry Caritativo, guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the supreme penalty of death.

The information, dated January 23, 1997, charging the appellant, Larry Caritativo, of the crime of murder read as follows:

That on or about the 28[th] day of April, 1995 at around 3:30 o'clock in the morning, in Sitio Bulangcog, Barangay Iriron, Municipality of Calintaan, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the accused being then armed with a sharp bladed instrument, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault, and stab with the said weapon one Expidito "Freddie" Mariano, thereby inflicting upon the latter serious wounds which caused his untimely death.

CONTRARY TO LAW.[2]

Upon arraignment on July 14, 1998, appellant, assisted by counsel de oficio, pleaded not guilty to the crime charged.[3] The next hearing, appellant waived his right to a pre-trial conference.[4] Thereafter, trial on the merits ensued.

The prosecution presented four witnesses, namely: Catalino Gonzales, Expedito Prado, Dr. Michael Jimenez and Rosalinda Mariano.

Catalino Gonzales (Catalino) testified that around 3:30 a.m. on April 28, 1995, while he was attending a dance on the occasion of the wedding of Minesa Dalida and a certain Zamora in Sitio Bulangcog, Barangay Iriron, Calintaan, Occidental Mindoro, the appellant, Larry Caritativo, whispered[5] to him that he was going to stab somebody. Catalino had known the appellant for a long time because they were neighbors.[6] Appellant's father, Peping Caritativo, and Catalino were friends.[7]

Catalino asked the appellant who he was going to stab. The appellant pointed to a certain person Catalino did not know, saying that that person was the one who ran over and killed his mother ("siya ang nakasagasa sa nanay ko").[8] The appellant then showed Catalino a knife tucked in his waist. The knife was a double-bladed instrument about 8 inches long.[9]

Catalino did not know the person singled out by the appellant. Nevertheless, he advised the intended victim to leave the dance hall.[10] About five minutes later,[11] a commotion arose. People inside the dance hall were running in different directions. Most of them ran towards the jeep parked some ten meters away[12] from the

dance hall. Two persons[13] had been stabbed. One was bleeding inside the jeep while the other was sprawled on the ground, dying. One of the victims was Freddie Mariano (the victim in this case). Catalino knew Mariano but did not know the other victim.[14]

At around 4:00 a.m.,[15] Catalino left the dance hall to go home. He met the appellant on the highway, about 150 meters from the dance hall. They went home together. While walking, the appellant put his arm on Catalino's shoulder and told him that he was the one who stabbed the victims. Pointing to his stomach, the appellant said, "Dito pare, sinagad ko hanggang lumagitik sa jeep." [16]

Catalino did not believe the appellant at first but when a vehicle passed by and its lights focused on the appellant's white shirt, Catalino noticed blood on it. The appellant started to run away but Catalino held his arm. Catalino told him not to run lest the people suspect him. They then proceeded to their respective homes. Catalino's house was only one kilometer away from the dance hall. Before they parted, the appellant told Catalino not to tell anybody about his revelation.[17]

At around 7:00 a.m. of the same day (April 28, 1995), the father of the appellant, Peping Caritativo (Peping), went to Catalino's house. Peping and Catalino were neighbors. Peping told Catalino, "Pare, ikaw lang ang nakakaalam na nakasaksak ang aking anak." Catalino replied, "Pare, pag nalaman ng batas 'yan delikado ka." Peping then threatened him, "Pare, ikaw lang ang nakakaalam nito kaya delikado ka!" [18]

Towards the end of his testimony, Catalino Gonzales identified and affirmed his sworn statement executed on May 12, 1995.[19]

The second prosecution witness was Expedito Prado (Expedito). He testified that he had known the appellant for six years.[20] At around 3:30 a.m. on April 28, 1995, while a dance was going on during the wedding reception of his niece, Minesa Dalida, in Sitio Bulangcog, Iriron, Occidental Mindoro, he was seated on a chair outside a parked passenger jeep, waiting for a ride home to Calintaan. The parked passenger jeep was about four arms' length away from the dance hall.[21] Without noticing Expedito, the appellant entered the jeep and immediately stabbed the two sleeping persons inside ("pag-akyat sa jeep bigla na lang sinaksak 'yung dalawang natutulog").[22]

When the appellant alighted, he noticed Expedito. The appellant chased him but Expedito was able to escape.[23] The appellant ran towards the mango tree, about 20 meters from the parked jeep,[24] while Expedito ran home to Poblacion, Calintaan which was about three kilometers away.[25]

The third prosecution witness was Dr. Michael Jimenez, the rural health officer of Rizal, Occidental Mindoro. He examined the cadaver of the victim, Freddie Mariano, and he found one stab wound on the chest, specifically on the 4th intercostal space, midclavicular line. The size of the wound was four centimeters. There were no contusions, bruises or any other injuries found on the cadaver of the victim. The victim's heart was hit, thus no immediate medical attendance could have saved him. The immediate cause of death was loss of blood. The sharp object used to inflict the wound could have been a knife or a bolo. The assailant could have been either in front of the victim or at his side. There was a possibility that the assailant was in front of the victim.[26]

Dr. Jimenez affirmed and identified the medico-legal report he issued on April 28, 1995.[27] Being familiar with the handwriting of his wife, Dr. Beth Jimenez, Dr. Michael Jimenez likewise affirmed the correctness and authenticity of the death certificate of the victim which Dr. Beth Jimenez issued as the rural health officer of Calintaan, Occidental Mindoro.[28]

Dr. Beth Jimenez was actually present in court and ready to testify but her testimony was dispensed with because the defense admitted the authenticity of the death certificate she issued.[29]

The fourth and last prosecution witness was Rosalinda Mariano (Rosalinda), the mother of the victim Freddie Mariano. She testified that Freddie was her eldest son. He was legally married but was separated from his wife. They had a 15-year-old son who was in her custody since childhood. As a result of the death of her son, she incurred expenses in the amount of P120,000. The breakdown of the expenses incurred was listed on a piece of paper which she identified in court.[30]

Her son, during his lifetime, was a farm helper of the Valerio family with a fixed monthly salary of P3,000. She knew the victim's salary because he used to send her money for the studies of one of his sisters in college. Her son was 41 years old when he was killed. The death of her son was very painful to her and she still felt the pain of his loss. She also would not be able to support the needs of the victim's son because she was already old and had no income.[31]

On cross-examination, Rosalinda testified that she did not secure receipts for all the expenses listed on the piece of paper but might be able to secure a receipt for the coffin and the embalming.[32]

For its part, the defense presented four witnesses: Monchito Angeles, Minesa Zamora, Santiago Caritativo and appellant himself, Larry Caritativo.

Monchito Angeles (Monchito) testified that he arrived at the wedding party at around 7:00 p.m. on April 27, 1995. He helped in serving the food. He noticed the presence of the appellant at around 9:00 p.m. He, his brother-in-law Herbert Montenegro, Obet Tanglaw and the appellant held a drinking spree. After the drinking session (he could not remember the exact time it ended), he joined the dancing in the dance hall. At around 3:30 a.m., he was dancing the cha-cha with the appellant beside him. They suddenly heard shouting coming from where the "Jet-Ric" passenger jeep was parked. The jeep was about 30 meters away from the dance hall.[33]

People ran towards the jeep. Monchito did the same. There, he saw Freddie Mariano dead inside the jeep and Marlon Trambulo bleeding on the ground. He helped Marlon board the jeep with the help of Herbert Montenegro and one of Montenegro's conductors.[34]

Marlon Trambulo died on the way to the hospital without being able to tell him who the perpetrator was. Monchito and his companions then brought the victims to the Municipal Hall but the policeman at the police station advised them to bring the dead bodies to their respective houses. The parents of Marlon cried but the parents of Freddie were angry. They then washed the jeep in the river and went home.[35]

In May, 1995, less than a month after the incident, he learned that the appellant was the suspect in the killing of Freddie and Marlon. He did not give any statement during the investigation conducted by Judge Josefino A. Garillo because he did not know that he would be called to testify later on. The appellant did not talk to him before he testified in court. He was surprised that the appellant was a suspect because he was with him in the dance hall at the time of the incident.[36]

On cross-examination, he testified that the light in the dance hall illuminated the parked jeep. One could run to the jeep from the dance hall in four or five seconds. He could not remember how many were dancing in the hall. He was conversing with the appellant at that time. During the commotion, he did not notice the direction where appellant ran because he was focused on finding out what the commotion was all about.

The appellant was just an acquaintance. His house was two kilometers away from appellant's. He saw the appellant in their barrio three days after April 28, 1995 but did not know that appellant was the suspect in the killing of Freddie Mariano and Marlon Trambulo. After he learned that appellant was the suspect, he no longer saw him in their barrio. He later heard that appellant was arrested in Tondo, Manila.[37]

The second defense witness was Minesa Dalida-Zamora. The appellant was her sister's brother-in-law. She testified that, on April 28, 1995, at around 3:30 a.m. when the commotion occurred, she saw the appellant dancing, together with Monching (Monchito) Angeles. She did not bother to go to the crime scene or inquire what happened. She went to her room in the house adjacent to the dance hall and slept because she was already very sleepy.[38]

On cross-examination, she testified that she was inside her house preparing to sleep when she saw the appellant dancing. He was with Monching Angeles. Her house was near the dance hall and there were many people inside her house, mostly her relatives. When the commotion happened, the appellant did not leave the dance hall and continued dancing.[39]

The third defense witness was Santiago Caritativo,[40] the father of the appellant. He had seven children, of whom the appellant was the fifth. He testified that, in the morning of April 28, 1995, he went to the house of prosecution witness Catalino Gonzales to get the fish he ordered. Since Catalino was not able to get the fish, he returned to his house. He and the appellant arrived there simultaneously at around 6:00 a.m. There was nothing unusual about the appearance of the appellant who told him about the stabbing incident: that one was dead and another was seriously wounded. He had already heard about it though from his neighbor, Catalino Gonzales. Catalino testified against his son (the appellant) because he (Catalino) suspected him (Santiago Caritativo) of hacking his dog. On May 8, 1995, the appellant left Calintaan for San Jose, Occidental Mindoro to look for work.[41]

On cross-examination, Santiago testified that he did not see the appellant from May 8, 1995 up to May 27, 1998 or a period of three years. From the hall where the wedding party was held, appellant's house was nearer (only one kilometer away) than his house which was four kilometers away. At 6:30 a.m. on April 28, 1995, the appellant arrived at his house and confirmed what Catalino had already told him about a dead person and another who was seriously wounded.[42]

The fourth and last defense witness was the appellant himself, Larry Caritativo. He was a resident of Bulangcog, Iriron, Calintaan, Occidental Mindoro since birth. He testified that he went to the wedding party at around 7:00 p.m. on April 27, 1995. At around 3:00 a.m., he helped out in the kitchen. At 4:00 a.m., he joined the dancing at the hall. He could not remember the names of the persons on the dance floor, except Monching (Monchito) Angeles. Although he joined the drinking spree, he was not drunk. He did not know the victims, Freddie Mariano and Marlon Trambulo. He was not aware of any commotion in the early morning of April 28, 1995.[43]

He left the dance hall at 6:00 a.m. and went home by foot. His house was two kilometers away from the hall. He did not meet anybody on the way. He proceeded to his father's house instead and rested there from 7:00 a.m. to 1:00 p.m. His father and mother were at home. His parents' house was two kilometers away from his. His father told him that Freddie Mariano and Marlon Trambulo were killed but he had no reaction to the said information. After resting, he went to the place where the wedding was held and helped in the dismantling of the "damara." [44]

He went to Manila on May 8, 1995 to look for a job. He landed a stevedoring job at Pier 2 with the North Star Company. He worked there for two years (from May 1995 to the latter part of 1997) but lost his ID and other documents issued by North Star. He, however, had an ID of Bantay Bayan, Manila. He was arrested on May 27, 1998 in Tondo, Manila while working as a vendor in Divisoria at that time. From the time he left Bulangcog, he communicated with his wife and parents through letters.[45]

On cross-examination, appellant testified that he knew that there was a jeep parked near the dance hall. In the early morning of April 28, 1995, he did not notice anything unusual at the wedding party. He was not aware that

people ran towards the parked jeep because he was busy helping out in the kitchen. He heard the commotion but did not leave the kitchen. He did not know prosecution witness Expedito Prado and had no quarrel with him. His cousin, Renato Walata, told him to go to Manila on May 8, 1995 to look for a job.[46]

On re-direct examination, the appellant testified that he noticed the commotion while dancing. He was with Monching Angeles. He did not go to the place where the commotion was for fear that he might be blamed ("baka po ako mapagbalingan").[47]

In weighing the testimonies of the witnesses, the trial court gave more credence to the prosecution witnesses and ruled that the defense of alibi by herein appellant must fail in the light of the following:

1. Expedito Prado could not have been mistaken in identifying the accused as the assailant of the victim. He was seated on a chair with its back leaning at (sic) the parked passenger jeep, more or less four (4) arms length from the place where the dancing was taking place. He saw the accused entered (sic) the jeep and stabbed Freddie Mariano and Marlon Trambulo. "Pag-akyat sa jeep bigla na lang sinaksak 'yung dalawang (2) natutulog." When the accused alighted from the jeep he chased the witness but he was able to escape. (t.s.n. December 1, 1998, pages 4-6).
2. When the crime happened, the light coming from the dance hall reached the parked jeep and you can reached (sic) the jeep within four to five seconds by running (t.s.n. March 1, 1995, page 15). The conditions for visibility were favorable, the ability of Prado as witness to recognize the accused should be upheld.
3. The possibility of mistaken identity was also ruled out by the fact that Prado had known the accused even before the incident (t.s.n. December 1, 1998, page 3).
4. No ill motive was imputed by accused to Prado for having testified against him, thus Prado's testimony was no less than the untarnished truth. Prado's positive testimony that the accused was the perpetrator of the crime remained unchallenged (t.s.n. April 23, 1999, page 24).[48]

The trial court also ruled that the culpability of herein appellant was further established by the fact that he fled Calintaan, Occidental Mindoro after the commission of the crime. The trial court did not believe his explanation that he left Calintaan to look for a job in Manila.

Finding that treachery attended the commission of the crime, the trial court convicted herein appellant of the crime of murder and sentenced him to suffer the death penalty. The dispositive portion of the decision, dated May 12, 2000, read:

WHEREFORE, and in the light of all the foregoing considerations, the Court finds that the accused LARRY CARITATIVO is GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER, as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act No. 7659, otherwise referred to as the Death Penalty law, and is HEREBY SENTENCED TO DEATH.

The accused is ordered to indemnity (sic) the heirs of the victim EXPEDITO "FREDDIE" MARIANO in the amount of SEVENTY-FIVE THOUSAND PESOS (P75,000.00) and to furthermore pay said heirs the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) as actual and moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prisons, Mutinglupa City, Metro Manila.

SO ORDERED.[49]

In this automatic appeal to us, the appellant assigns the following errors for our consideration:

I

The trial court erred in finding accused-appellant guilty beyond reasonable doubt of the crime of murder.

II

Granting arguendo that accused-appellant is really guilty of murder, the trial court, however, gravely erred in imposing the supreme penalty of death.

The appellant attacks the credibility of prosecution witnesses, Expedito Prado and Catalino Gonzales. Specifically, appellant contends that:

(1) Catalino Gonzales was not a credible witness because his testimony that the appellant told him (Catalino) that he stabbed Freddie Mariano in the stomach did not conform to the post-mortem examination that the victim's lone stab wound was on his left chest.[50]

(2) Expedito Prado was likewise not credible because the crime scene was not well lighted and Expedito Prado, his back to the jeep, could not have seen the face of the assailant.[51]

The evidence of the prosecution being allegedly weak, the appellant insists on his acquittal.

Well-settled is the rule that the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court was in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses and the facts must be given great weight on appeal, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. [52]

Hence, we find no reason to depart from this well-entrenched rule on credibility. There is nothing to warrant a reversal of the decision of the trial court.

We find no basis to doubt the testimony of Catalino Gonzales. Catalino testified categorically and candidly that appellant confessed to him that he killed Freddie Mariano. Catalino's sworn statement [53] read:

Na, noong malaman ko na merong sinaksak ako ay umuwi na. At sa aking pag-uwi galing sa sayawan (kasalan) pagtapat ko sa bahay ni ALBINO PRANADA sa may (Billboard Project of Gov. Josephine Ramirez) ay aking nakasalubong itong si LARRY CARITATIVO. At ang sabi ko nakaputi ka ng damit baka mapagbintangan ka dahil merong sinaksak at nakaputi ang suot ng sumaksak doon sa kasalan. At kaming dalawa ay umuwi na, at sa aming paglalakad pauwi sa aming bahay ay sinabi niya sa akin na "Tang ako ang sumaksak sa kanilang dalawa"at habang kami ay papauwi na ay meron kaming nakasalubong na sasakyan at siya ay tatakbo sana akin lamang pinigilan. At ng siya ay makarating sa kanilang bahay siya ay nagpalit ng damit at ako naman ay natulog na sa aming bahay."[54] (emphasis ours)

Catalino identified and affirmed his sworn statement in court. His oral testimony also affirmed the contents of his sworn statement:

TESTIMONY OF CATALINO GONZALES

FISCAL SALCEDO:

Q: What did you do after knowing that there were two (2) persons stabbed inside the jeep?

A: I went home, sir.

Q: When you went home do you have occasion to see again accused Larry Caritativo?

A: Yes, sir.

Q: Where did you see him?

A: I saw him at the road, sir.

Q: Do you have occasion to talk to him?

A: Yes, sir.

Q:

What did he tell you, if any?

A: When we were walking he placed his arm on top of my shoulder and he told me that he was the one who stabbed the persons, sir.

Q: What did you tell him when he told you that?

A: I asked Larry Caritativo where did he hit that person and he answered "Dito, pare" pointing to his stomach "sinagad ko hanggang lumagitik sa jeep", sir.

Q: During that conversation with Larry Caritativo, according to you he was then wearing white t-shirt, what did you notice to (sic) his t-shirt at the time he confided to you that he was the one who stabbed?

A: I did not believe in him when he confided to me that he was the one who stabbed but when the light focus (sic) on him I saw his t-shirt with blood, in fact, he was about to run away, sir.

Q: What did you do when he was about to run?

A: I stopped him by holding his hand, sir.

Q:

Other than preventing him to run what else is your purpose why you held him?

A: So that "Hindi siya mabisto na may kasalanan," sir.

Q: Thereafter, what did you do next?

A: We left after that and I went to my house, sir. He also left the place, sir.

Q: Where did he proceed?

A: To his house, sir."[55]

Nowhere in the records of the case did appellant ever categorically deny his admission of guilt to Catalino Gonzales.[56] Section 26, Rule 130 of the Rules of Court provides:

Section 26. Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

And in *People vs. Maqueda*,[57] we ruled that:

Accordingly, Maqueda's admissions to Ray Dean Salvosa, a private party, are admissible in evidence against the former under Section 26, Rule 130 of the Rules of Court. In *Aballe vs. People*, this Court held that the declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him and any person, otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood it. The said witness need not repeat verbatim the oral confession; it suffices if he gives its substance." (emphasis ours)

This ruling was reiterated in *People vs. Tito Zuela*,[58] wherein we ruled:

Accused-appellant Maximo repeated the contents of his sworn statement to Romualda Algarin who, in turn, related these in court. Such declaration to a private person is admissible in evidence against accused-appellant Maximo pursuant to Rule 130, Section 26 of the Rules of Court stating that the 'act, declaration or omission of a party as to a relevant fact may be given in evidence against him.' The trial court, therefore, correctly gave evidentiary value to Romualda's testimony. In *People v. Maqueda*, we held:

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And in the recent case of *People v. Andan* [269 SCRA 95, 110 (1997)][]the Court reiterated the doctrine enunciated in the *Maqueda* case. In *Andan*, the court said that "when the accused talked with the mayor as confidant and not as a law enforcement officer, his uncounselled confession did not violate his constitutional rights. Constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime."

Clearly therefore, under Section 26, Rule 130 of the Rules of Court, the admission by the appellant expressly acknowledging his guilt to Catalino Gonzales, a private party, can very well be taken in evidence against him.

Of course, appellant attempts to discredit Catalino's credibility by saying that Catalino's testimony did not conform to the post-mortem examination result, that is, that the lone fatal stab wound was found on the left chest of the victim, not in the stomach as appellant allegedly told him.

Appellant's argument is misplaced. The mere fact that what the appellant told Catalino did not conform to the post-mortem examination result did not in any way affect Catalino's credibility. Catalino only testified on the substance of what the appellant told him. And it was not improbable that the appellant himself was mistaken as to where he stabbed the victim. What was of critical importance in Catalino's testimony was appellant's admission of guilt to him ("Tang, ako ang sumaksak sa kanilang dalawa"; "When we were walking he placed his arm on top of my shoulder and he told me that he was the one who stabbed the persons, sir").[59] All this the appellant failed to controvert. He never denied his admission of guilt to Catalino.

In *People vs. Mayorga*,[60] we ruled that it is imperative for the accused to disprove the extrajudicial admission he made under Section 26, Rule 130 of the Rules of Court:

Nor is there merit to the court's finding that Edwin's testimony was hearsay. This is a misinterpretation of the hearsay rule. It must be pointed out that the statement to him of the accused constitutes extrajudicial admission (Section 26, Rule 130 states: Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him). This admission can be received against the accused since it is not within the purview of the hearsay rule. Wigmore explains that the hearsay rule is intended to give the parties a right to object to the introduction of a statement not made under oath and not subject to cross-examination. Its purpose is to afford a party the privilege, if he desires it, of requiring the declarant to be sworn and subjected to questions. Wigmore then adds that where the evidence offered are his statements, the purpose does not apply, and so the hearsay rule does not likewise apply, as 'he does not need to cross-examine himself.'" (Wigmore on Evidence, Vol. IV, Sec. 1048)

In the face of Edwin's testimony that the accused had made the admission, it becomes imperative for the latter to disprove it. His explanation that Edwin was coerced to testify against him is at best a futile attempt to prop a tottering defense." (emphasis ours)

Moreover, the appellant failed to show any improper motive why Catalino Gonzales would testify falsely against him. The testimony of appellant's father that the reason why Catalino testified falsely against the appellant was because he (appellant's father) hacked Catalino's dog was unworthy of belief, being uncorroborated and self-serving. The allegation was hollow as nothing was offered to support it. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[61]

Thus, the trial court correctly admitted in evidence the testimony of Catalino Gonzales regarding the admission of guilt by the appellant. But appellant's admission, standing alone, is not sufficient to convict him. Being merely an inference, appellant's admission must be supported by some other proof which shows his culpability for the crime charged.[62]

This is where the testimony of eyewitness Expedito Prado assumes great importance.

Eyewitness Expedito Prado testified clearly, candidly and categorically that he saw appellant Larry Caritativo kill the victims. His testimony was as follows:

FISCAL SALCEDO:

Q: Will you tell us what was that incident that transpired while you were at the back of the passenger jeep?

A: This Larry Caritativo went inside the jeep and stabbed somebody, sir.

Q: Who were these somebody that were stabbed by Larry Caritativo inside the jeep?

A: Freddie Mariano, sir.

Q: Who else, if any?

A: Marlon Trambulo, the second victim, sir.

Q: How were you able to see Larry Caritativo stabbed (sic) the two (2) victims inside the jeep?

A: "Pag-akyat sa jeep bigla na lang sinaksak 'yung dalawang (2) natutulog", sir.

Q:

How were you able to identify that Larry Caritativo was the one who went inside the jeep and stabbed the two men sleeping there?

A: Because he is known to me for a long time and he was the only one who went inside the jeep, sir.

Q: You mentioned the two victims inside the jeep, before Larry Caritativo went inside the jeep and stab these two persons, what were the two persons doing?

A: The two (2) persons were sleeping, sir.

Q: After accused Larry Caritativo stabbed the two (2) victims, what did he do next, if he did anything?

A: He went down, sir.

Q: When he went down what happened?

A: When he went down he noticed me, sir.

Q: After that what happened next?

A: He chased me, sir.

Q:

Was he able (sic) reach you?

A: He was not able to reach me, sir.

Q: So, thereafter, where did you proceed, if you proceeded anywhere?

A: I went home, sir.

Q: After you went home what did you come to know after that?

A: There was a jeep following with the cadavers boarded, sir.

Q: Did you come to know who were these people who were boarded (sic) in that jeep?

A: At first I do not know yet, sir.

Q: Thereafter, did you come to know the identity of these two (2) persons?

A: Yes, sir.

Q:

Who were they?

A: They were Freddie Mariano and Marlon Trambulo, sir.

Q: What did you do when you come to know that the victims were Freddie Mariano and Marlon Trambulo?

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A: I was able to tell them that I was the one who were (sic) able to see the victims, sir."^[63]

The parked passenger jeep where the crime was committed was only about ten meters^[64] or four arms' length^[65] away from the dance hall. That distance was near enough for the jeep to be sufficiently illuminated by the light coming from the dance hall. In fact, appellant's own witness, Monchito Angeles, testified that the place was well lighted and the crime scene was so near it could be reached from the dance hall by running in four to five seconds. Monchito Angeles testified as follows:

FISCAL SALCEDO:

With the permission of the Honorable Court.

Q: By the way, what is the light made of in the dance hall?

A: There was a generator and there was also coleman, sir.

Q: Was the illumination of the light coming from the dance hall able to reach the jeep that was parked?

A: Yes, sir.

Q:

If you should run from the dance hall to the jeep, will it take you two seconds or three seconds?

A:

Maybe four to five seconds, sir."^[66] (emphasis ours)

There was no question that the locus criminis was well lighted. Thus, the argument of the appellant that eyewitness Expedito Prado could not have clearly seen the face of the assailant due to insufficient illumination must be rejected.

Moreover, eyewitness Expedito Prado saw appellant up close when the latter went out of the jeep. In fact, appellant chased Expedito on realizing that Expedito witnessed the commission of the crime. Besides, Expedito had known appellant for a long time, thus bolstering the fact that he could not have made a mistake as to appellant's identity.[67]

Lastly, no evidence was presented to show that eyewitness Expedito Prado was motivated by any ill-will to testify falsely against the appellant. Appellant himself admitted that he had no quarrel with Expedito Prado.[68] Where there is no evidence that a prosecution witness has been actuated by any improper motive and absent any compelling reason to conclude otherwise, the testimony of Expedito Prado is entitled to full faith and credit. [69]

Against this clear and positive identification by Expedito Prado, and the categorical and straightforward statement of Catalino Gonzales regarding appellant's admission of guilt, appellant offered nothing but the lame defense of alibi.

At first, appellant said he was helping out in the kitchen when the commotion occurred. He did not notice the commotion because he was busy. He stopped work in the kitchen at around 4:00 a.m. (the crime happened at 3:30 a.m.) and then joined the dance till 6 a.m. He did not notice any commotion while he was dancing.[70]

Probably sensing, however, that something was not right with appellant's testimony on direct and cross-examination (which was in conflict with the prior testimonies of defense witnesses Monching Angeles and Minesa Dalida-Zamora that the appellant was supposedly with Monching Angeles when the crime happened), appellant's counsel, on re-direct examination, elicited a statement from the appellant that he was with Monching Angeles, dancing, during the commotion.[71]

All throughout the testimony of appellant on direct and cross-examination, he insisted that he did not notice any commotion. It is beyond belief that, while Monching who was dancing beside him, was sufficiently alarmed by the commotion to proceed to where the disturbance was and in fact helped bring the victims to the hospital,[72] the appellant allegedly did not notice any turbulence at all. When finally he admitted on re-direct examination that he was aware of the commotion after all, he claimed he did not go to the crime scene because he might be blamed for the crime ("Baka po ako mapagbalingan.")[73] In the first place, appellant never bothered to explain why he thought he might be blamed for killing the victims.

In any case, whether he was in the kitchen or in the dance hall, we cannot accept the alibi of the appellant. Both the house and the dance hall were very near the crime scene. The house (where the kitchen was) was just beside the dance hall which in turn was only ten meters away from the parked passenger jeep. From the dance hall, a person could run to the crime scene in four or five seconds.[74]

Thus, even if the appellant was really on the dance floor as he claimed, this was not per se proof that he did not commit the crime, considering its proximity to the scene of the crime. It is a well-settled rule that, in order to properly appreciate the defense of alibi, the twin requirements of time and place must be strictly met.[75] The accused must prove not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.[76] Hence, we find no physical impossibility for the appellant to be at the scene of the crime at the time it happened. Thus, appellant's lame defense of alibi is not enough to overturn the convincing evidence of the prosecution proving his guilt.

Alibi is an inherently weak defense that becomes even weaker with the positive identification of the accused. Furthermore, an alibi cannot prevail over the positive identification of the accused by a credible witness who has no motive to testify falsely.[77]

Another significant point. The fact that appellant fled after the commission of the crime was a strong indication of

guilt. He alleged that his cousin had a job waiting for him in Manila. So, on May 8, 1995 (ten days after the commission of the crime), he left Calintaan, Occidental Mindoro to go to Manila. He claimed that he worked in Pier 2 as a stevedore of North Star Company. However, he could not present his company ID because it was allegedly lost. He was arrested in Tondo, Manila where he said he worked as a vendor after being employed for two years at North Star Company.

The timing of his departure from Calintaan and his inability to present any proof of employment in the company where he allegedly worked make appellant's story difficult to believe. His self-serving testimony failed to sufficiently explain his flight from Calintaan. Settled is the rule that flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.[78]

Accordingly, appellant's argument that, where the evidence of the prosecution is weak, it becomes essential that motive be disclosed by evidence otherwise the guilt of the accused becomes open to reasonable doubt, must necessarily fail. Motive is not an essential element of a crime. It becomes inconsequential where there are affirmative and categorical declarations proving the appellant's accountability for a felony. Such is the case here.[79]

In view of all the foregoing considerations, we find the appellant guilty beyond reasonable doubt of the crime charged.

The information alleged that treachery attended the killing. Under the Revised Penal Code, there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.[80] Thus, for treachery to be present, two conditions must concur: the employment of means of execution that gives the person attacked no opportunity for self-defense or for retaliation and the deliberate or conscious adoption of the means of execution.[81]

The essence of treachery is the swift, sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[82]

In this case, it was sufficiently shown that the victims were sleeping inside the jeep when the appellant stabbed them ("pag-akyat sa jeep bigla na lang sinaksak 'yung dalawang natutulog").[83] Expedito saw the appellant enter the jeep and stab the victims. This testimony by Expedito Prado was corroborated by the testimony of Dr. Michael Jimenez that the assailant could be in front of the victim.[84]

It is an established rule that treachery attends the killing where the accused attacks the victim while the latter is asleep and unable to defend himself.[85] Obviously, a sleeping victim is not in a position to defend himself, take flight or avoid the assault, thus ensuring that the crime is successfully executed without any risk to the attacker.

The trial court was therefore correct in ruling that treachery attended the killing of Freddie Mariano, thus qualifying the crime to murder. However, the trial court erred in considering for the second time the element of treachery in imposing the death penalty on the appellant. The court ruled:

"The guilt of the accused having been proven beyond reasonable doubt by the prosecution, attended by treachery, he deserves nothing less than the supreme penalty of DEATH."[86]

Murder is punishable by reclusion perpetua to death.[87] Death may be imposed only if there are aggravating circumstances present in the commission of the crime. If there is none, the lesser penalty of reclusion perpetua shall be imposed. This is pursuant to Article 63 of the Revised Penal Code which provides:

In all the cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

In the present case, we can no longer consider treachery as an aggravating circumstance again, this time for the purpose of imposing the death penalty, because it was already used to qualify the killing to murder.[88] Other than the qualifying circumstance of treachery, no proof of any other aggravating circumstance was presented during the trial or alleged before the court to justify the imposition of the death penalty. Thus, the proper penalty should only be reclusion perpetua.

We now come to the award of damages. We cannot sustain the P100,000 awarded by the court as actual and moral damages. It is not correct to merge the two. Moral damages are given in consideration of the pain and anguish suffered by the victim's family on account of his death while actual damages are awarded to compensate for the expenses incurred by them as a result of the death.

Moral damages are automatically given for the reason stated above and are pegged at P50,000 based on current jurisprudence.[89] Actual damages, on the other hand, need to be supported by receipts or some other documentary evidence as required by Article 2199 of the Civil Code.[90]

In the present case, the prosecution failed to present any receipts to substantiate its claim for the expenses allegedly incurred by reason of the victim's death. Thus, the award of actual damages by the trial court cannot be sustained. However, in accordance with our recent ruling in the case of *People vs. Abrazaldo*, G.R. No. 124392, February 4, 2003, we hereby grant temperate damages in the amount of P25,000 on the ground that it was reasonable to expect that the family of the victim incurred expenses for the coffin, burial and food during the wake.

Finally, since the penalty was downgraded to reclusion perpetua, the award of civil indemnity by the trial court in the amount of P75,000 should also be reduced to P50,000 in line with recent jurisprudence.[91] Civil indemnity in the amount of P50,000 is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[92]

WHEREFORE, the decision of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4112 is hereby **AFFIRMED** with **MODIFICATION**. The appellant is sentenced to suffer the penalty of reclusion perpetua instead of the penalty of death. He is ordered to indemnify the heirs of Freddie Mariano the amount of P50,000 as civil indemnity ex delicto, P50,000 as moral damages and P25,000 as temperate damages. The award of actual damages is hereby deleted for lack of documentary evidence.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

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- [1] Penned by Executive Judge Ernesto P. Pagayatan; Rollo, pp. 18-33.
- [2] Rollo, p. 6.
- [3] Records, pp. 19-21.
- [4] Records, pp. 23-24.
- [5] Sinumpaang Salaysay ni Catalino Gonzales y Laudenio; Records, p. 4.
- [6] TSN, October 19, 1998, p. 3.
- [7] TSN, March 16, 1999, p. 16.
- [8] TSN, October 19, 1998, p. 4-5, 19; Sinumpaang Salaysay ni Catalino Gonzales y Laudenio, Records, p. 4.
- [9] TSN, October 19, 1998, p. 15.
- [10] TSN, October 19, 1998, p. 5.
- [11] TSN, October 19, 1998, p. 17.
- [12] TSN, October 19, 1998, p. 6.
- [13] Two separate informations were filed against herein appellant, Larry Caritativo, for the death of two victims. In the murder case involving the other victim, Marlon Trambulo, Larry Caritativo pleaded guilty to the lesser offense of frustrated homicide. The trial court convicted him of such lesser offense in a decision dated August 25, 2000. Caritativo did not appeal from the decision.
- [14] TSN, October 19, 1998, pp. 6-7, 12.
- [15] TSN, October 19, 1998, p. 13.
- [16] TSN, October 19, 1998, pp. 7, 16.
- [17] TSN, October 19, 1998, pp. 7-8, 16.
- [18] TSN, October 19, 1998, pp. 8-9.
- [19] TSN, October 19, 1998, p. 9.
- [20] TSN, December 1, 1998, p. 3.
- [21] TSN, December 1, 1998, p. 4.
- [22] TSN, December 1, 1998, p. 5.
- [23] TSN, December 1, 1998, pp. 5-6.
- [24] TSN, December 1, 1998, p. 10.
- [25] TSN, December 1, 1998, p. 11.
- [26] TSN, December 21, 1998, pp. 3-5, 8-10.
- [27] TSN, December 21, 1998, p. 4.
- [28] TSN, December 21, 1998, pp. 6-7.

- [29] TSN, December 21, 1998, p. 10-11.
- [30] TSN, December 21, 1998, pp. 3-8.
- [31] TSN, January 8, 1999, pp. 9-10, 12.
- [32] TSN, January 8, 1999, pp. 10-11.
- [33] TSN, March 1, 1999, pp. 5-9.
- [34] TSN, March 1, 1999, pp. 9-10.
- [35] TSN, March 1, 1999, pp. 10-13.
- [36] TSN, March 1, 1999, pp. 13-15.
- [37] TSN, March 1, 1999, pp. 15-19.
- [38] TSN, March 2, 1999, pp. 4-9.
- [39] TSN, March 2, 1999, pp. 10-13.
- [40] Also called Peping Caritativo by prosecution witness, Catalino Gonzales; TSN, October 19, 1998, p. 8.
- [41] TSN, March 16, 1999, pp. 3-12.
- [42] TSN, March 16, 1999, pp. 12-17.
- [43] TSN, April 23, 1999, pp. 3-14.
- [44] TSN, April 23, 1999, pp. 14-16.
- [45] TSN, April 23, 1999, pp. 16-21.
- [46] TSN, April 23, 1999, pp. 21-25.
- [47] TSN, April 23, 1999, p. 27.
- [48] RTC Decision; Rollo, pp. 31-32.
- [49] RTC Decision; Rollo, p. 78.
- [50] Appellant's Brief; Rollo, pp. 58-59.
- [51] Appellant's Brief; Rollo, pp. 59-60.
- [52] People vs. Chavez, 278 SCRA 230 [1997]; People vs. Siguin, 299 SCRA 124, [1998].
- [53] Dated May 12, 1995 and sworn to before MCTC Judge Josefino A. Garillo.
- [54] Records, p.3.
- [55] TSN, October 19, 1998, pp. 7-8.
- [56] TSN, April 23, 1999, pp. 1-28.

[57] 242 SCRA 565 [1995].

[58] 323 SCRA 589 [2000].

[59] Sworn Statement dated May 12, 1995; Records, p. 3; TSN, October 19, 1998, p. 7.

[60] 346 SCRA 458 [2000].

[61] People vs. Bacungay, G.R. No. 125017, March 12, 2002, citing People vs. Geralde, 348 SCRA 38 [2000].

[62] People vs. Mariño, 352 SCRA 127 [2001], citing People vs. Maqueda, 242 SCRA 565 [1995] and People vs. Lorenzo, 240 SCRA 624 [1995]; People vs. Faco, 314 SCRA 505 [1999]; People vs. Tito Zuela, G.R. No. 112177, January 28, 2000.

[63] TSN, December 1, 1998, pp. 4-7.

[64] TSN, October 19, 1998, p. 6.

[65] TSN, December 1, 1998, p. 4, 9.

[66] TSN, March 1, 1999, p. 15.

[67] TSN, December 1, 1998, pp. 3, 6, 10-11.

[68] TSN, April 23, 1999, p. 24.

[69] People vs. Obosa, G.R. No. 129688, April 2, 2002; People vs. Cariño, G.R. No. 129960, August 28, 2001.

[70] TSN, April 23, 1999, pp. 6-9.

[71] TSN, April 23, 1999, p. 27.

[72] TSN, March 1, 1999, pp. 9-13.

[73] TSN, April 23, 1999, p. 27.

[74] TSN, March 1, 1999, p. 15.

[75] S/Sgt. Elmer T. Vergara vs. People of the Philippines. G.R. No. 128720, January 23, 2002; People vs. Diasanta, 335 SCRA 218 [2000].

[76] People vs. Rogelio Sansaet y Santoja, G.R. No. 139330, February 6, 2002; People vs. Marollano, 276 SCRA 84 [1997].

[77] Supra note 38, citing People vs. Delmendo, 296 SCRA 371 [1998]; People vs. Batidor, 303 SCRA 335 [1999] and People vs. Verde, 302 SCRA 690 [1999].

[78] People vs. Roman, 314 SCRA 425 [1999]; People vs. Alvero, 224 SCRA 16 [1993].

[79] People vs. PO3 Renato F. Villamor, G.R. No. 140407-08 & 141908-09, January 15, 2002.

[80] Article 14, par. 16.

[81] People vs. Ayupan, G.R. No. 140550, February 13, 2002.

[82] People vs. PO3 Renato F. Villamor, G.R. Nos. 140407-08 & 141908-09, January 15, 2002.

[83] TSN, December 1, 1998, pp. 5, 8, 10.

[84] TSN, December 21, 1998, p. 10.

[85] *People vs. Fernandez*, G.R. No. 134762, July 23, 2002; *People vs. Mores*, 311 SCRA 342 [1999]; *People vs. Molina*, 312 SCRA 130 [1999].

[86] Rollo, p.78.

[87] Article 248, Revised Penal Code.

[88] *People vs. Bensig*, G.R. No. 138989, September 7, 2002; *People vs. Reduca*, 301 SCRA 516 [1999].

[89] *People vs. Manlansing*, G.R. No. 131736-37, March 11, 2002.

[90] Article 2199, Civil Code: Except as provided by law or by stipulation one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[91] *People vs. Belaong*, G.R. No. 138615, September 18, 2002, citing *People vs. Bonito*, 342 SCRA 405 [2000].

[92] *People vs. Manlansing*, G.R. No. 131736-37, March 11, 2002.

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