

THIRD DIVISION

[G. R. No. 142043, September 13, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NELSON BITUON, ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

The instant case is here on appeal from the judgment^[1] of the Regional Trial Court of Manila, Branch 18 finding accused-appellant Nelson Bituon guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

On September 13, 1995, an information charging accused-appellant of the crime of murder was filed before the Regional Trial Court of Manila. The information reads, as follows:

"That on or about November 23, 1994, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one Gerardo Castillo by then and there stabbing him with a bladed weapon, hitting him on the different parts of his body, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter^[2]

Contrary to law."

Upon arraignment, accused-appellant pleaded not guilty to the crime charged against him and thereafter, trial on the merits ensued.

The facts of the case, as found by the trial court, are as follows:

"The record shows that the accused and Gerardo Castillo used to be neighbors at the Parola Compound, Del Pan, Tondo, Manila. On April 12, 1992, a brother of the accused was killed in a rumble that occurred in the neighborhood between the family of the accused and that of the Castillo family. The accused suspected that it was the Castillo family that was responsible for the death of his brother, because Gerardo Castillo and his brother Eddie Castillo has warned him, (accused), that he would be next. Fearful for his life, the accused and his family transferred their residence to Kataangan, Masbate, where his in-laws are from.

On November 23, 1994, at around 6:30 p.m., Gerardo Castillo was in the vicinity of the Mary Johnston Hospital, Tondo, Manila, when the accused

suddenly appeared from behind and stabbed Gerardo on his back and right side. Though mortally wounded, Gerardo was able to walk all by himself to the Mary Johnston Hospital, for treatment. On learning that her son was at the hospital, Virginia Castillo rushed thereto and she was able to talk to Gerardo, who confided to her that the accused was the one that stabbed him. And his exact words as quoted by his mother were: 'Nanay, and sumaksak po sa akin ay si Nonoy (nickname of accused).'

Due to inability of Virginia to deposit P5,000.00 with the Mary Johnston Hospital, she took her son to the Jose Reyes Hospital. On their way to the Jose Reyes Memorial Hospital, Gerardo asked her not to neglect his children should anything happen to him. The following morning, Gerardo succumbed to the two stab wounds inflicted by the accused, Exhibit "I", "J" and "k".

The accused went into hiding until he was arrested by the police in Bacoor, Cavite, on July 17, 1997, for illegal possession of firearms. Later, he was turned over to the custody of this Court through the Warden of the Manila City Jail in connection with this case.

The stabbing incident was witnessed by Ernesto Cabaniero, a retired seaman, single, 55 years old and a resident of 6646 Delpan Street, Binondo, Manila. He testified that on the evening in question, between the hour of 6:00 and 7:00 p.m., he was walking on Marga Street near the Mary Johnston Hospital, when he saw a man approach the victim and suddenly stab him at his back and other parts of his body. And on being asked by the trial prosecutor to look around in the courtroom to find out if the slayer was present, he pointed out and positively identified the accused as the killer of the victim. Not wanting to be involved, Cabaniero immediately went home. Three days later, he learned from the people in his place that the victim died as a result of the stab wounds he suffered. Several weeks later, he was approached by a woman, who resides one block away from his house, and she pleaded to him to testify in the case. At first he refused, but after the woman continued to entreat him on the matter, he was bothered by his conscience and he finally agreed to testify^[3]."

On December 3, 1999, the court *a quo* rendered a decision convicting accused-appellant of the crime of murder. The dispositive portion of the decision reads:

"WHEREFORE, the court finds the accused Alexander (alias Nelson) Bituon, guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law, and to pay the cost.

On the civil liability of the accused, the Court sentences him to pay the heirs of the victim, Gerardo Castillo, moral and nominal damages in the sum of P300,000.00 and P200,000.00 respectively, and legal compensation for the loss of the victim in the sum of P50,000.00 with

interest thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.^[4]"

Hence, this appeal where accused-appellant raises the following assignment of errors^[5]:

I.

THE LOWER COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION AGAINST THE ACCUSED WHICH WERE NOT PROVEN BY THE PROSECUTION.

II.

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED UNDER ARTICLE 248 OF THE REVISED PENAL CODE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

After a meticulous review of the evidence on record, we resolve to uphold the trial court's judgment of conviction.

In the case at bar, accused-appellant was positively identified as the person who stabbed the victim Gerardo Castillo in the early evening of November 23, 1994. Witness Ernesto Cabaniero testified that he saw accused-appellant attack the victim by stabbing him on the back and on the right side of his body. Cabaniero, who was about 4 to 5 arms' length away when the stabbing incident happened, was able to recognize accused-appellant because the place was well lit by several lampposts and, in fact, he was able to take note of accused-appellant's mole on the left side of his face. The pertinent portions of Cabaniero's testimony is as follows:

"PROS. PABELONIA TO WITNESS: (Direct-Exam)

Q: Mr. Witness, on November 23, 1994, between the hour of 6:00 and 7:00 in the evening, do you recall where you were?

A: I am (sic) at Morga Street.

Q: Where is this Morga Street located, in what District in Manila?

A: Near Mary Johnson, Tondo, Manila.

Q: Where did you come from at that time?

A: I came from Sundeo Street, Tondo, Manila.

Q: Where were you going then?

A: I was going to Kagitingan Street.

Q: While you were walking along Morga Street on your way to Kagitingan Street, on that particular day and time, do you recall of any unusual incident that took place?

A: Yes, Sir.

Q: Will you describe to this Hon. Court that unusual incident that took place?

A: We heard somebody call our attention (may sumitsit po).

Q: Then what happened after that?

A: I saw somebody approach Gerry Castillo.

Q: Then what happened?

A: Gerry Castillo was stabbed at the back.

Q: Who stabbed him?

A: (witness pointing to a man who answered by the name of Nelson Bituon, the accused in this case)

THE COURT:

Was he the one you saw approached Gerry Castillo?

A: Yes, Sir.

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PROS. PABELONIA TO WITNESS:

Q: Now, you stated a while ago, that while you were walking along Morga Street, you heard somebody calling the attention of somebody, you said "may sumitsit". Were you able to identify the person who made this "may sumitsit"?

A: The accused, Sir.

Q: How far were you from the accused when you heard him?

A: Four or five arms length away, Sir.

Q: And according to you the accused suddenly stabbed the victim Gerardo Castillo?

A: Yes, Sir.

Q: Now, what was the lighting condition in the area where this incident happened?

A: It was well lighted because there were several lampposts nearby.

Q: Now, will you demonstrate to the Honorable Court how the accused stabbed the victim?

(witness demonstrating by placing his left hand on the left shoulder of the Court personnel who played the part of the victim and with the right hand of the witness he thrashed it toward the back of the alleged victim)

THE COURT:

How many times was the victim stabbed?

A: Three times, Sir.

THE COURT:

All at the back?

A: I saw the accused stab the victim three times and I saw the victim stabbed at the back and on the right side of his body.

THE COURT:

Continue, Prosecutor.

PROS. PABELONIA TO WITNESS:

Q: Now, what happened to the victim after he was stabbed?

A: I did not stop, I went home so I did not know anymore what happened to the victim.

THE COURT:

Why, you did not try to help the victim?

A: I was afraid.

THE COURT:

You did not attempt to help the victim because you were afraid?

A: Yes, Sir.

Q: What made you so sure that it was the Accused Alexander alias Nelson Bituon who stabbed the victim?

A: I was able to see his face clearly, in fact he has a mole on the left side of his face.

THE COURT:

Make it on record that on the left cheek of the accused there is a mole (nunal).

Q: Do you know the accused before the incident?

A: I only knew him by face^[6]."

In this case, the trial court found that witness Cabaniero was in a position to clearly see the face of the assailant. He was just four to five arms lengths away from the accused when the incident occurred. He was able to clearly witness the fatal stabbing as immediately before the said incident, he heard accused-appellant call the attention of the victim by making a "pssst" sound. Furthermore, the street was well lit by lampposts, giving him a good look at the physical features of accused-appellant without any obstruction. In fact, he was even able to make out a