

FIRST DIVISION

[G.R. No. 143126, July 31, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERIC BALTAZAR Y VILLARUEL, APPELLANT.

DECISION

AZCUNA, J.:

On appeal is the decision^[1] of the Regional Trial Court, Branch 109, Pasay City, finding appellant Eric Baltazar y Villaruel guilty of the crime of murder, and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim in the amount of P50,000.^[2]

The information filed against him reads:

That on or about the 14th day of October, 1998 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Eric Baltazar y Villaruel with intent to kill, with treachery and evident premeditation, did then and there wi[1]lfully, unlawfully and feloniously stab one Roberto Alba y Quianga, on his chest and abdomen, which caused the death of the latter.

Contrary to Law.^[3]

Assisted by counsel *de officio*,^[4] Baltazar pleaded not guilty.

During trial on the merits, the prosecution presented four witnesses: (1) the arresting officer, PO1 Domerlin Sayson;^[5] (2) Rosita La Torre,^[6] who was the live-in partner of the victim and an alleged eyewitness to the stabbing; (3) Danilo Alba,^[7] the brother of the victim; and (4) Dr. Dominique Aguda,^[8] who conducted the post-mortem examination of the victim's body.

Appellant Eric Baltazar y Villaruel^[9] alone testified in his defense, proffering denial and alibi.

The following facts appear from the prosecution's evidence:

On October 14, 1998, at around 5:00 o'clock in the afternoon, Rosita La Torre and her live-in partner, Roberto Alba y Quianga, were seated on a bench in front of their residence at 1840 Tramo St., Pasay City. Roberto got home early from work and as they were conversing with each other, Baltazar suddenly appeared and repeatedly stabbed Roberto.^[10] Because of the unexpected nature of the attack, Roberto was not able to put up a defense.^[11] After having been stabbed several times, Roberto tried to run towards the house but was pursued by Baltazar. It was only when Rosita

shouted, "*tama na, tama na*"^[12] and started shouting for help, that Baltazar stopped attacking Roberto and fled from the scene.^[13] Roberto was then brought to the Pasay General Hospital but he died later that evening.^[14]

Rosita La Torre gave two statements^[15] to the police and positively identified Baltazar in court as the one who stabbed Roberto.^[16] She testified that she knew Baltazar by his nickname "Toto Tattoo."^[17] She knew the accused by this alias as this is how he is identified or known to the other people in their place and this is how he is called by people who know him.^[18] She is very certain that Toto Tattoo is the very same person who stabbed her live-in partner, the same person who gave his name to the police as Eric Baltazar and the same person she identified in court as responsible for Roberto's death.^[19]

Dr. Dominique^[20] Aguda who performed the post-mortem examination^[21] of Roberto's body, testified that she found seven (7) stab wounds: one was located on the left chest, one on the upper abdomen, another was located on the right chest, one on the right axillary^[22] portion, two stab wounds were on the left arm and another stab wound was on the right arm. The stab wounds on the right and left chest were considered fatal. The wound on the left chest hit major organs, namely, the upper lobe of the left lung and left ventricle of the heart, while the stab wound on the right chest hit the upper lobe of the right lung.^[23] The doctor further testified that the victim and the assailant were face to face and the wounds were all frontal. The weapon used in inflicting the wounds was a sharp, single-bladed instrument.

To refute the allegations of the prosecution, appellant testified in his defense and stated that he was a cigarette vendor. From October 14, 1998 to October 20, 1998, he said he sold cigarettes during the day and retired for the night at his residence in 196-B Gutierrez St. corner Dominga St., Cuneta Compound, Pasay City.^[24]

He further testified that on October 21, 1998, as he was walking along Tramo St., he met two uniformed policemen accompanied by another person in civilian clothes.^[25] Immediately, handcuffs were forcefully placed on him. The policemen then asked the man in civilian clothes if appellant was "the one you are referring to," to which the civilian assented. The policemen then pulled out their guns and proceeded to whip and hit him on the back, causing him to fall forward.^[26] Surprised, he asked the men what he had done, to which the two policemen replied "*Nagmamaang-maangan ka pa, ikaw yata ang pumatay.*"^[27] He protested that he was innocent about the incident.^[28]

Thereafter, he was brought to the police headquarters in Buendia. He was again mauled and ordered to undress. While he was thus undressed, Rosita La Torre arrived and identified him.^[29] He was then brought to the Pasay General Hospital but he was not given a copy of the medical certificate. From the hospital, he was brought to the Criminal Investigation Division (CID).^[30] No written statement was taken at the CID.^[31] Policeman Sayson together with Rosita La Torre, thereafter demanded P10,000 from him so that the case against him would not be pursued. He told Sayson that he does not have that amount of money as he was only a cigarette

vendor.^[32] He was then brought to the prosecutor's office for inquest. He told the prosecutor that he knew nothing about the case and did not stab Roberto Alba. He reasoned that if he had been responsible, he would have immediately left Pasay after the incident.^[33]

He further stated that his nickname is "Totoy" and not "Toto Tattoo" as testified to by Rosita. He denied having been in any drinking session with the deceased Roberto Alba as, according to him, he does not drink liquor. He denied knowing Roberto and stated that he had never been to Roberto's house.^[34] He believed that extortion is behind the charges, due to his failure to produce the money demanded from him. He averred that he had never been arrested by an officer nor criminally charged before.^[35]

On cross-examination, he testified that since his father died, he has been staying with his sister in Pasay City for four months. He averred that he does not have a "sputnik" tattoo but only tattoos on the upper arm or underarm portion of the forearms both on the left and right which appear to be names of two men. He claimed that he got his tattoo from his friends and not from a provincial jail and that he is not a fugitive from justice.^[36]

In support of his defense of alibi, Baltazar claimed that on October 14, 1998, he was at the Monumento Circle in Caloocan City,^[37] thus, he could not have stabbed Roberto. He said he does not also know why Rosita La Torre executed an affidavit implicating him in the stabbing incident.^[38] He denied that he frequented the vicinity of Tramo in order to visit friends and have a drinking spree with them.^[39]

On April 24, 2000, the trial court rendered the assailed decision. It gave credence to the testimonies of the prosecution witnesses and found the same to be "positive and categorical" in pointing to Baltazar as the perpetrator of the crime.^[40] In qualifying the killing to one of murder, the trial court stated that although the attack was frontal, the same was so sudden and unexpected, hence, is considered treacherous. Moreover, according to the trial court, the intent to kill is apparent, as evidenced by the several stab wounds inflicted upon the victim. The trial court did not give credence to appellant's defense of denial and alibi and found favor in the positive declaration of the eyewitness that it was Baltazar who stabbed Roberto several times.^[41] With regard to the alleged extortion, the trial court dismissed it for being unsubstantiated.^[42]

Applying Article 248 of the Revised Penal Code,^[43] the trial court convicted the appellant, stating in the dispositive portion of its decision, as follows:

In view of all the foregoing, the Court finds that the prosecution has proven the guilt of the accused, Eric Baltazar y Villaruel beyond reasonable doubt for murder. There being no mitigating circumstances present, the Court hereby sentences him to reclusion perpetua and to indemnify the heirs of the victim fifty thousand pesos (P50,000.00).

SO ORDERED.^[44]

Hence, this appeal, with one assigned error:

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY IN THE COMMISSION OF THE CRIME CHARGED.^[45]

From a reading of the parties' arguments, this Court finds two issues for resolution: (1) the credibility of eyewitness Rosita La Torre with regard to the identification of the appellant *vis-à-vis* appellant's defense of alibi; and (2) the propriety of appreciating treachery in order to qualify the offense as murder.

Appellant assails the credibility of eyewitness Rosita La Torre on the ground that he was not properly identified by the witness. Appellant asserts that he was nicknamed "Totoy," contrary to the witness' allegations in her statements as well as in her testimony, that appellant was known by the nickname "Toto Tattoo."

On the other hand, the Office of the Solicitor General (OSG) contends that appellant was positively identified by the prosecution witness. It is pointed out that the incident happened at around 5:00 o'clock in the afternoon and Rosita clearly saw the face of the appellant. The eyewitness was able to give a clear and detailed description of the assailant and a narrative of what actually transpired that fateful day.

With regard to the allegation that Rosita did not identify him properly because his nickname was "Totoy" and not "Toto Tattoo," and that it was Rosita's first time to see his tattoo at the police station, this Court finds that these alleged inaccuracies on the part of the eyewitness do not detract from her positive identification of the appellant as the very same person who stabbed the victim.

Rosita La Torre declared that she had seen appellant drinking with her live-in partner on a few occasions in the past. The positive identification of appellant was based mainly on facial recognition and not on appellant's nickname or any tattoo on his body. Thus, even without the nickname and the marking on his body, Rosita was still positive in declaring that appellant was the one she saw perpetrating the crime.

It was also shown that the time of the incident was around 5:00 o'clock in the afternoon and that while it was almost dark, one could still recognize people's faces.^[46] This Court also takes note of the fact that at the time the crime was committed, eyewitness Rosita La Torre was only a few meters from the perpetrator and the victim. She was in a position to observe closely the appearance of appellant.

Furthermore, no ill-motive was established by appellant for Rosita La Torre to testify falsely against him. Absent such ill-motive, this Court can only conclude that her act in imputing the responsibility for the crime on appellant stemmed from a legitimate desire to bring the perpetrator to justice.

In the similar case of *People v. Peralta*,^[47] where the credibility of the eyewitness who was the victim's common-law wife was also put in issue, this Court stated:

Considering the proximity of the location and that Milagros was only an arm's length away from her husband, the trial court cannot be faulted for giving credence to witness' testimony that she saw the crime that was then unfolding. Adding credence to her testimony is the fact that relatives of a victim of a crime have a natural knack for remembering the

face of the assailant and they, more than anybody else, would be concerned with obtaining justice for the victim by bringing the malefactor to the face of the law. Indeed, family members who have witnessed the killing of a loved one usually strive to remember the faces of the assailants.^[48]

Indeed, this Court agrees with the OSG that Rosita's testimony on the matter of identifying the assailant was unswerving and consistent.

Neither can the alleged extortion attempt on the part of police officer Sayson destroy the eyewitness' credibility. Not only was the extortion charge not proven, but no connection was established between the policeman and the eyewitness as to taint Rosita's testimony. Being a mere self-serving declaration, the alleged extortion has no appreciable evidentiary weight.

For its part, the defense adduces alibi and denial as defenses. To merit belief, alibi and denial must be buttressed by other convincing evidence of non-culpability. In the case under review, however, the only evidence offered by the appellant is his own self-serving declaration that he was in Monumento Circle selling cigarettes on the day the incident happened. Without corroboration, the same does not satisfy this Court. Moreover, it does not convince us because even if he did sell cigarettes in Monumento Circle earlier in the day, it was not altogether impossible for him to have been in Pasay City later that afternoon.

Positive identification, where categorical and consistent, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.^[49]

Appellant claims that the qualifying circumstance of treachery was not duly proved: *First*, the attack was frontal, per testimony of the eyewitness, as well as the location of the wounds. *Second*, it was clear from the testimony of eyewitness Rosita La Torre that she was facing the victim when the latter was stabbed by the appellant. Thus, she was not in a position to see or observe whether the stabbing was sudden and unexpected, as the assailant came from behind her. Furthermore, Rosita was not in her normal sense as she was in fact shocked and could not move at the time. *Third*, the victim had the chance to defend himself as he could have seen the appellant approaching him. The wounds he sustained in his hands show that he in fact defended himself from his attacker. *Fourth*, the testimony of Dr. Aguda shows that there is a strong possibility that these wounds were defensive wounds sustained during the fight between the victim and the appellant.

Arguing for the prosecution, the OSG counters that appellant had surreptitiously and without warning stabbed the victim, who was at that time unarmed and completely unaware of any impending danger to his life. It was a surprise attack launched by appellant carrying a deadly weapon, without giving any opportunity to the victim to offer any defense. According to the OSG, although made face to face, the attack was so sudden that it rendered the victim helpless and completely at the mercy of his assailant. Moreover, the number and location of the stab wounds clearly show that appellant consciously adopted the particular means, method or form of attack employed, thereby clearly showing appellant's determination to ensure the death of the victim.