

EN BANC

[G.R. No. 142905, March 18, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL GUTIERREZ @ "AMIL" AND ROBERTO ESPAÑA @ "BETH", ACCUSED-APPELLANTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellants Ramil Gutierrez @ *Amil* and Roberto España @ *Beth* were charged with Murder for the brutal killing of Lopito Fernandez in an Information which alleges:

That on the 28th day of February 1994, at around 9:30 o'clock in the evening, at Sitio Dipacpac, Barangay Reserva, Municipality of Baler, Province of Aurora, Philippines, said accused conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery, attack, assault and use personal violence upon the person of one LOPITO FERNANDEZ by then and there suddenly hitting him with fist blow on his face, and stabbing him several times with bladed weapons and also hitting him with pieces of stones and with bottles of coke at the different parts of his body thereby inflicting upon him serious physical injuries which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.^[1]

The case was docketed as Criminal Case No. 1870 at the Regional Trial Court of Baler, Aurora, Branch 96. At the arraignment, both accused-appellants pleaded "not guilty" to the charge.^[2] The case thereafter proceeded to trial.

After trial, the court *a quo* rendered judgment convicting both accused of the felony thus:

WHEREFORE, judgment is hereby rendered finding accused Roberto España GUILTY beyond reasonable doubt of the crime of Murder as defined in and penalized by Article 248 of the Revised Penal Code, as amended by Republic Act 7659, and is hereby sentenced to suffer the extreme penalty of DEATH.

LIKEWISE, this Court finds accused Ramil Gutierrez GUILTY beyond reasonable doubt of the Crime of Murder and is hereby sentenced to suffer the indeterminate penalty ranging from eight (8) years of *prision mayor* as minimum to fourteen (14) years and eight (8) months of *reclusion temporal* as maximum.

Each of the accused shall indemnify the heirs of the victim P50,000.00 and to pay the costs.

SO ORDERED.^[3]

The case is now before us on automatic review, pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659. In their Appellant's Brief, accused-appellants argue:

I

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE SAID ACCUSED BEYOND REASONABLE DOUBT.

II

THE COURT A *QUO* ERRED IN FINDING ACCUSED-APPELLANTS GUILTY OF THE CRIME OF MURDER, DESPITE THE ABSENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY.^[4]

It appears from the record that in the evening of February 28, 1994, Ramil Gutierrez, Roberto España, Roberto Santiago and Dominador Ramos attended a party at the house of Dante Bautista and Aning Morada at Sitio Gabgab, Barangay Buhangin, Baler, Aurora. While they were drinking gin, España brought out a knife and laid it on the table. Gutierrez picked up the knife. España got it back, impaled it on the wall and said, "Whoever crosses me will be killed!"^[5]

After the party, España drove Gutierrez home on board his *Kubota* hand tractor. Santiago and Lerry Matunan rode with them. On the way to Gutierrez's house at Barangay Reserva, Baler, Aurora, the hand tractor ran out of fuel. Santiago left to buy fuel a kilometer away.^[6] While the others waited, the tricycle driven by Lopito Fernandez suddenly rammed into the hand tractor. The headlight of the tricycle was off and the road was only illuminated by moonlight.^[7]

España suddenly alighted from the hand tractor and beat up Fernandez.^[8] He then repeatedly stabbed Fernandez while the latter pleaded, "*Ka Beth, huwag magkabarangay tayo*,"^[9] As Fernandez lay prostrate on the ground, Gutierrez hit him twice on the head with an empty bottle.^[10] Thereafter, they left the victim and went home.^[11]

Fernandez sustained numerous stab wounds, a fractured skull and gunshot wounds.^[12] The probable cause of his death was brain damage secondary to mauling of the forehead and hypovolemic shock due to multiple stab wounds in the chest.^[13]

In his defense, accused-appellant España testified that he was waiting in the hand tractor when the tricycle rammed into it, as a result of which he suffered a wound on his forehead. He immediately alighted from the tractor and punched the tricycle driver. The tricycle driver, Fernandez, recognized him and said, "*Ikaw langyan Ka*

Beth?" (It's just you, Ka Beth?). Accused-appellant asked him, "*Bakit mo kami binangga?*" (Why did you bump us?). Fernandez replied, "*Pasensiya ka na Ka Beth dahil walang ilaw ... saka na lang...*" (I'm sorry Ka Beth because I didn't have lights . . .next time..). Feeling dizzy from his head injury, accused-appellant España walked back to the tractor and told Fernandez that they would talk things over the next morning.^[14]

As accused-appellant España was leaning on the handle of the hand tractor, he heard Fernandez trying start the engine of his tricycle. Then he heard a moan. When he turned around he saw Fernandez being stabbed. At that juncture, Santiago returned and filled the tractor with fuel. España started the engine of the tractor and told his companions to board.^[15]

España overheard accused-appellant Gutierrez asking Santiago where are the bottles containing the gasoline. Santiago replied that he put them in the trolley of the hand tractor. Later, España heard gnashing of teeth and glass striking something. Thereafter, Gutierrez asked Santiago to help him carry somebody. España started to drive. His companions then boarded the tractor. When they reached Gutierrez's place, the latter alighted and told España, "*Ako na ang bahala doon*" (I'll take care of what happened).^[16]

On the other hand, accused-appellant Gutierrez alleged that it was España who stabbed Fernandez and he only talked Gutierrez into admitting to the crime because he had a family to feed. Gutierrez testified that he was seated on the left side of the trailer when the tricycle collided with it. España alighted from the tractor and punched the tricycle driver. The tricycle driver exclaimed, "*Ka Beth, huwag, magkabarangay tayo*" (Ka Beth, don't, we come from the same barangay). España stabbed the tricycle driver repeatedly and, after leaving the victim prostrate on the ground, returned to his seat and impatiently muttered, "*Ang tagal nung bumili ng gasolina!*"^[17]

Two minutes later, Santiago and Matunan returned with the gasoline. They saw the body of the victim sprawled near the tractor and asked, "What is this Kuya Beth?" España replied, "Never mind," and told them to pour the gasoline in the tank. España then handed one of the empty bottles of Coke which contained the gasoline to Santiago and gave the other to Gutierrez. España then ordered Santiago and Gutierrez to hit the victim with the bottles. After the two complied, they left the body on the road and España drove Gutierrez home.^[18]

Gutierrez's mother asked España what caused the wound on his forehead, but the latter replied that it was nothing. España told Gutierrez to leave so he will not get involved. Gutierrez went to Isabela then to Labi, Nueva Ecija where he stayed at his aunt's house.^[19]

While in Labi, Nueva Ecija, Gutierrez learned that he was being charged for Fernandez's murder. He wrote his father, who then fetched him and surrendered him to one Major Barrozo. Gutierrez was thereafter detained at the municipal jail of Baler, Aurora together with España.^[20]

Accused-appellants ask that that they be acquitted or, in the alternative, that they

be convicted of the lesser offense of Homicide. They claim that the deadly assault on the victim was done at the spur of the moment and that their ire was sparked by the reckless ramming of the tricycle into the hand tractor. They further argue that there was no showing of treachery.

We disagree.

Accused-appellants' respective versions on how the other supposedly perpetrated the crime hardly inspire belief. Lopito Fernandez is now dead and, concededly, the prosecution has not clearly established who delivered the fatal wounds on the victim. But Fernandez's lifeless body shows how he was attacked by his assailants. The wounds eloquently speak for themselves. The testimony of Baler Municipal Health Officer, Dr. Nenita S. Hernandez, who conducted the post-mortem examination on the cadaver of the victim, as well as the Death Certificate, disclose that the fatal wounds were inflicted on the same occasion, by more than one instrument and more than one person.^[21] Indeed, numerous wounds on the body of the victim indicate plurality of assailants.^[22] Furthermore, recovered from the scene of the crime were a *colonial* knife, shards of softdrink bottles, pieces of bloodstained stones and empty shells of a .38 caliber revolver.^[23] These negate the claims of both accused-appellants that one or the other is the sole author of the crime. In fact, they show that the malefactors who assaulted the victim acted in concert.

Given the foregoing circumstances which show that the assailants acted in unison or apparently conspired with each other to kill the victim, it becomes immaterial who inflicted the fatal wounds. In conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. The act of each conspirator in furtherance of the common purpose in contemplation of law is the act of all.^[24]

There is no question that the assailants' conscious intention was to kill, not merely to maim or injure, judging from the cold-blooded manner and ferocity of the attack as mutely but eloquently underscored by the number and location of the wounds sustained by the victim. Based on the Medico Legal Officer's testimony and as reflected in the Post Mortem Examination Report,^[25] Lopito Fernandez sustained two lacerated wounds on the forehead. Because of the excessive force used by the attacker, Fernandez's skull was fractured causing portions of his brain to protrude, while the other wound lacerated his left upper eyelid and left a hematoma.

Aside from the foregoing, the victim sustained fifteen stab wounds. Five of these were inflicted on the victim's head. One tore his right lateral eyelid. Three wounds were found on his chin, one of which was thrust with such force that it displaced the victim's gums, two lower canines and upper incisors. The fifth wound was caused by a knife thrust in the middle of his lower neck. The remaining stab wounds were found on the victim's chest, several of which were directed upward. Two of these are deep parallel wounds, located in the middle of the victim's chest, "vertically oriented" and fatal.^[26] In addition, the victim sustained two superficial gunshot wounds on the right scapular area and right middle chest. The probable cause of death of the victim was "brain damage secondary to the mauling of the forehead

and hypovolemic shock due to multiple stab wounds on the chest.”^[27]

It strains credulity to attribute all the above-mentioned injuries to only one malefactor. Moreover, a supposedly scared and unwilling accomplice is not likely to bash the head of a victim with such force as to crack the latter’s skull and cause portions of the brain to protrude therefrom. Curiously too, both accounts of accused-appellants are absolutely *silent* on how the victim sustained two gunshot wounds. Neither has there been any showing of whether the gun tucked in the waistband of the victim was his, or whether it was ever fired and the spent shells recovered from the *locus criminis* came from the firearm.

It is also improbable for Gutierrez to react the way España described it considering that the latter was supposedly the wronged party. It is even more incredulous for España to merely throw one punch at the author of his injury, calmly go back to where he was seated and to look impassively on as the allegedly infuriated Gutierrez attacked the victim.

Lerry Matunan, who testified for the defense, pointed to accused-appellant Gutierrez as the killer. However, the trial court did not believe him not only because of the inconsistency of his testimony to the physical evidence but also because of his silence on the shooting of the victim. The court *a quo* further pointed out that Matunan was a biased witness and may have hesitated to divulge the full particulars of accused-appellant España’s participation in the commission of the crime, being a nephew of the latter. The trial court also noted that Matunan could not have witnessed all the details of the killing because he claimed he ran away immediately after the victim was punched by España and stabbed by Gutierrez.

Verily, evidence to be worthy of credit must not only proceed from the mouth of a credible witness but must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances.^[28] Courts are not required to believe that which they judicially know to be unnatural, unusual and improbable when tested by rules which govern men of ordinary capacity and intelligence in a given matter.^[29] Indeed, no better test has been found to measure the value of a witness’s testimony than its conformity to the knowledge and common experience of mankind.^[30]

There is, therefore, no doubt that both accused-appellants are equally guilty of killing Lopito Fernandez.

We now come to the nature of the crime committed. Murder is defined as the unlawful killing of any person when qualified by any of the circumstances listed under Article 248 of the Revised Penal Code.^[31] Among these qualifying circumstances is *alevosia*. 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 the defense which the offended party might make.^[32] The qualifying circumstance of treachery attended the killing in this case as the two conditions for the same are present, *i.e.* that at the time of the attack, the victim was not in a position to defend himself; and that the offender consciously adopted the particular means, method or form of attack employed by him.^[33] The essence