

SECOND DIVISION

[G.R. No. 129960, August 28, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO CARIÑO @ "ORLANDO," ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated December 3, 1996, of the Regional Trial Court of Candon, Ilocos Sur, Branch 23, finding appellant Pedro Cariño @ "Orlando" guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of the victim, Edmundo^[2] Milan, the amount of P50,000.00 for loss of life, and P67,805.00 for burial and funeral expenses.

Appellant was charged with murder in an Information which reads:

That on or about the 16th day of September, 1992, in the municipality of Sta. Cruz, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack, stab and hack one Edmundo Milan, thereby inflicting upon the latter mortal wounds on different parts of his body, which wounds necessarily produced the death of said Edmundo Milan.

CONTRARY TO LAW.^[3]

The appellant was arraigned on May 7, 1993 and with the assistance of counsel, pleaded "Not Guilty" to the crime charged. Thereafter, trial on the merits ensued.

The prosecution anchored its case mainly on the testimony of Rolando Lovinaria. According to him, sometime in the evening of September 16, 1992, he and his brother-in-law, Edmundo Milan, attended the wake of one Dominador Opinion at Sevilla, Sta. Cruz, Ilocos Sur.^[4] During the wake, a misunderstanding occurred between Edmundo and appellant Pedro Cariño. The misunderstanding was apparently caused when Edmundo touched the head of Pedro,^[5] getting the ire of Pedro who then tried to get Edmundo to go outside with him to engage in a boxing bout.^[6] Rolando intervened and pacified both of them. Thinking that everything was settled, Rolando and Edmundo stayed at the wake watching a card game. After ten minutes, the two of them got up to go home. After a few moments, Rolando noticed that Pedro was following them on the road and was going to attack Edmundo.^[7] Rolando turned to meet Pedro and embraced him. Rolando pleaded

forgiveness for Edmundo's act. Said pleas fell on deaf ears. Pedro, instead of relenting, pulled out a "Rambo" knife^[8] and used it to break away from Rolando's embrace. Pedro then pursued Edmundo and upon catching up with him, stabbed the latter twice at the back with the "Rambo" knife.^[9] Pedro then hacked Edmundo on the head. After Pedro had left, Rolando called for help and brought Edmundo to the hospital where he was pronounced, "Dead on Arrival."^[10]

The prosecution then presented as its second witness Dr. Hermenigildo^[11] Somera, who had conducted the autopsy on the body of Edmundo Milan. The doctor testified that the victim suffered multiple wounds. The first four wounds were all linear lacerations located on different parts of the body. One was on the parietal area of the scalp. Another wound was 3 cm. along the horizontal plane at level of T4 along paravertebral line, left and found at the back of the face of the victim. The third wound was five cms. along the horizontal plane at level of L2-L3 along midscapular line, right. The fourth wound was about 3 cms., superficial and found in the middle of the right elbow. The victim also suffered "multiple contusions, hematoma, as well as abrasions in the left peri-orbital RT". The victim also had a black eye and a wound on the lips which the witness said could have been caused by a fall or a direct blow from another person. Finally, Dr. Somera testified that the fatal wounds which caused the death of Edmundo were the ones inflicted from behind.^[12]

Brenda Milan, sister of the victim, testified on the expenses which their family spent for the interment, funeral and burial of Edmundo.^[13]

The last two witnesses for the prosecution were SPO4 Gregorio Biteng and Councilwoman Marietta Oliver. Their testimonies concerned the recovery of the weapon used in the killing of Edmundo. Oliver testified that the son of Pedro, Orlando Cariño, surrendered a bladed weapon to her, which she then turned over to SPO4 Biteng.^[14] Her testimony was corroborated by SPO4 Biteng.^[15]

Appellant did not deny the killing but pleaded self- defense. As lone witness for the defense, he testified that at around 9:00 o'clock in the evening of September 16, 1992, he was at the wake of one Dominador Opinion and was playing a card game with Anacleto Anioan, Jr.. While he was playing, Edmundo, who was behind him, suddenly slapped his ears and then left. Appellant tried to regain his composure and "cool his feelings",^[16] then followed Edmundo to ask him why he was slapped. He was first stopped by Rolando Lovinaria but was allowed to go^[17] after he told the latter that he was just going to talk to Edmundo. Upon catching up with Edmundo, appellant asked him, "Why did you do that to me, Brod?" to which Edmundo replied, "Stupid."^[18] Thereafter, Edmundo pulled out a knife^[19] from his left waist. Upon seeing the knife, appellant boxed Edmundo, hitting him in the face. Then they grappled for possession of the knife. After he got possession of the knife, appellant brandished it to repel the attacks of Edmundo. Since Edmundo did not stop his aggressive advances, appellant stabbed him with the knife. He then threw the knife and proceeded to the house of Sgt. Servando Manzano to surrender himself.^[20]

On December 3, 1996, the trial court promulgated its decision, disposing as follows:

IN VIEW OF ALL THE FOREGOING, the Court finds the accused, Pedro Cariño, guilty beyond reasonable doubt as principal of the crime of MURDER and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. He is further ordered to pay to the heirs of Edmundo Milan the amount of P50,000.00 for loss of life and also, the amount of P67,805.00 as funeral and burial expenses.

SO ORDERED.^[21]

Aggrieved, appellant appealed seasonably. In his brief, he assigns two errors for our consideration.

1. THE HONORABLE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF ROLANDO LOVINARIA WHO WAS AN INTERESTED WITNESS BEING THE BROTHER-IN-LAW OF THE VICTIM EDMUNDO MILAN.

2. THE HONORABLE COURT ERRED IN FINDING THAT THE KILLING OF EDMUNDO MILAN WAS ATTENDED WITH TREACHERY.

Appellant contends that aside from being related to the victim and thus a biased witness, Rolando Lovinaria as the lone eyewitness for the prosecution gave statements which are contrary to human experience. Appellant, however, mentions only one example in his brief, the allegation that Edmundo Milan walked normally even after appellant was already struggling to free himself from Rolando's embrace. According to appellant, this is unbelievable because the normal reaction of a person who had noticed that someone was following him would be to walk fast.^[22]

As for the second assigned error, appellant argues that there can be no treachery in this case as the victim was not unaware of appellant's intent since there was a heated argument between them, preceding the attack. The fact that there was already an existing hostility between the parties prior to the attack should presumably give the victim an opportunity to defend himself.^[23]

On the first assigned error, the Office of the Solicitor General (OSG), counters that mere relationship between the victim to a witness does not necessarily impair the latter's credibility, especially if, as in this case, there was no improper motive attributed to the witness which could have impelled him to commit perjury.^[24]

However, regarding the second assigned error, the OSG agrees that treachery was not sufficiently established in this case. The OSG recommended that the appellant be found guilty of homicide, instead of murder.^[25]

The issues we find in this case are: (1) whether the testimony of prosecution witness Rolando Lovinaria deserves credence; (2) whether self-defense was proved by appellant; and (3) whether treachery qualified the killing of Edmundo Milan to murder.

The first issue raised by appellant is one of credibility. In criminal cases, when the