

THIRD DIVISION

[G.R. No. 160811, April 18, 2008]

**RICKY BASTIAN, PETITIONER, VS. HON. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

REYES, R.T., J.:

COMPARED to appellate magistrates who merely read and rely on the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them, the trial judge is in a better position to calibrate the testimonies of the witnesses at the stand.

The bare claim of responsibility for the killing of the victim by the New People's Army (NPA) does not bind or tie the hands of the Court in determining the real killer as borne by the evidence.

Di tulad ng mga mahistrado sa apelasyon na tumutunghay at nananalig lamang sa mga record at stenographic notes, ang hukom sa paglilitis ay nasa mas mainam na posisyon upang timbangin ang mga salaysay ng mga testigo.

Ang pag-amin ng NPA sa pagpatay ng biktima ay hindi makapagtatali sa hukuman upang alamin ang tunay na salarin ayon sa ebidensya.

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) affirming with modification that^[2] of the Regional Trial Court (RTC) in Kalibo, Aklan, Branch 8, finding petitioner Ricky Bastian guilty of homicide, instead of murder.

The Facts

On April 24, 1995, at around 11:00 p.m., Lorna Bandiola went to Solido Elementary School in Nabas, Aklan to fetch her children Lorena and Lorsen who were attending a dance party.^[3] On her way inside the campus, she saw petitioner Ricky Bastian, together with co-accused Albino Layasan, Roque Prado and Renato Prado. The trio were seated on the concrete fence of the school.^[4]

Lorna did not mind them as she proceeded to the dance hall.^[5] Upon reaching the hall, she learned that the party was still in progress. She decided to while the time and waited for her children. When the affair ended at around 2:00 a.m., Lorna left the school premises with Lorena and Lorsen in tow.

While on their way out of the campus, Lorna saw her son-in-law John Ronquillo, the

victim, about ten (10) arms-stretch ahead of them. Apparently, he also went to the dance party and was about to go home.^[6] It was at that point when Lorna saw petitioner step ahead of his co-accused. Unexpectedly, petitioner drew a gun and shot Ronquillo on the head. The victim fell instantaneously. Petitioner continued shooting while Ronquillo lay sprawled on the ground.^[7]

Lorna heard petitioner's co-accused saying, "He is dead already," before the group ran away.^[8] She trembled with fear and had to be helped by Lorena and Lorsen in going out of the school campus.^[9]

After receiving a dispatch report regarding the shooting incident at the school grounds, Police Officers Jose Roño, Elmer Villanueva and Ramie Zomil immediately proceeded to the crime scene. The investigating team arrived at around 2:50 a.m. They found the dead body of John Ronquillo on the ground, face up. When they checked the body, they recovered one (1) bullet slug on the ground, near the back of the victim.

The victim's cadaver was later turned over to the Joy Funeral Parlor in Solido, Nabas, Aklan. There, Dr. Gloria Boliver of the Municipal Health Office conducted a post-mortem autopsy.

On complaint of the heirs of the victim John Ronquillo, petitioner Ricky Bastian and his co-accused Albino Layasan, Roque Prado and Renato Prado, were all indicted for murder in an Information bearing the following accusation:

That on or about the 25th day of April 1995, in the early morning in *Barangay* Solido, Municipality of Nabas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating together and mutually helping one another, with intent to kill one JOHN RONQUILLO, with treachery and evident premeditation, while armed with a gun, did then and there willfully, unlawfully and feloniously attack, assault and shoot said JOHN RONQUILLO, thereby inflicting upon the latter serious and mortal wounds, to wit:

1. Gunshot wound, head, at the fronto-parietal region, 1 inch above the right ear, penetrating the skull and the brain tissue. Wound is round in shape with clean cut edge (wound entrance).
2. Gunshot wound, oval in shape, abdomen level of the umbilicus, right side of the lumbar region (entrance).
3. Gunshot wound, abdomen, lumbar region, posterior to wound No. 2 with irregular edge (wound exit).
4. Gunshot wound, left breast, oval in shape, clean cut edge (entrance).
5. Gunshot wound, right chest, irregular edge (exit).
6. Wound, left arm posterior, irregular edge.

As per Autopsy Report issued by Dr. Gloria Z. Bolivar, Municipal Health Officer of the Rural Health Unit of Nabas, Aklan, hereto attached and forming an integral part hereof which wounds directly caused the death of said JOHN RONQUILLO.

That as a result of the criminal acts of the above-named accused, the heirs of the deceased JOHN RONQUILLO suffered actual and compensatory damages in the amount of P50,000.00.^[10]

Petitioner waived the conduct of a pre-trial conference, hence, trial on the merits ensued.

The prosecution evidence, which was portrayed by the foregoing facts, was principally supplied by Lorna Bandiola, Dr. Gloria Boliver of the Nabas, Aklan Municipal Health Office, and Jose Roño of the local Philippine National Police (PNP) office. Their accounts were corroborated in material points by the victim's spouse Analie Ronquillo and Nemelyn Tulio.

Upon the other hand, the defense version founded on denial, was summarized by the appellate court in the following tenor:

The defense, on the other hand, presented seven (7) witnesses including accused-appellant, who denied killing J. RONQUILLO and interposed the defense of alibi. He claimed that in the evening of April 24, 1995, he was in the house of *Barangay* Captain VOLTAIRE GARCIA, drinking liquor with the latter and ALBINO LAYASAN until 12:30 a.m. They were very drunk and were unable to go home. He went to bed ahead of the others, while GARCIA and LAYASAN were still conversing (Id. at 9). He woke up at 8 a.m. and learned later at 2 p.m. of the following day that JOHN was shot. He did not attend the dance party because he was heavily drunk (TSN, April 4, 2000, pp. 4-6). His testimony was corroborated by VOLTAIRE GARCIA.^[11]

RTC and CA Dispositions

On March 20, 2001, the trial court convicted petitioner of homicide instead of murder. In the same breath, the RTC acquitted Layasan and Roque and Renato Prado of the charge due to insufficient evidence. The *fallo* of the trial court judgment reads:

WHEREFORE, premises considered, considering the presence of the aggravating circumstance of nighttime and applying the Indeterminate Sentence Law, accused Ricky Bastian is sentenced to suffer the penalty of imprisonment ranging from TWELVE (12) years of *prision mayor* in its maximum period as minimum penalty to SEVENTEEN (17) years, FOUR (4) months and ONE (1) day of *reclusion temporal* in its medium period as maximum penalty and to indemnify the heirs of John Ronquillo the sum of P50,000.00 for the death of the victim and another sum of P200,000.00 for loss of earning capacity, and another sum of P10,000.00 as reimbursement of burial expenses, and another sum of P50,000.00 for moral damages.

For lack of sufficient evidence, accused Albino Layasan, Roque Prado and

Renato Prado are hereby ACQUITTED. No pronouncement as to cost.

SO ORDERED.^[12]

Still dissatisfied, petitioner elevated the matter to the CA. The appeal was anchored on the lone ground that his guilt was not proven beyond reasonable doubt. On August 29, 2003, the CA Fifteenth Division affirmed the trial court disposition with modification as to the damages awarded. The dispositive part of the CA decision reads:

WHEREFORE, premises considered, the decision of the Regional Trial Court, Branch 8 of Kalibo, Aklan, is hereby AFFIRMED with modification. Applying the Indeterminate Sentence Law and absent any modifying circumstance, the accused-appellant (petitioner) is hereby sentenced to an indeterminate penalty ranging from ten (10) years of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is further ordered to indemnify the heirs of the victim the amount of P1,800 for burial expenses, P141,320 for lost earnings of the deceased, P50,000 for death indemnity, and another P50,000 for moral damages (*People v. Morano*, G.R. No. 129235, Nov. 18, 2002).

SO ORDERED.^[13]

In reducing the award of damages, the CA opined:

As to the amount of damages awarded, except for the P1,800 burial fee receipt (Exhibit "G," p. 213, Records) issued by the Nabas Parish Church, no other official receipts were adduced to prove the actual damages incurred for the burial expenses. Offered as proof of the expenditures were the certifications issued by the alleged owners of the funeral parlor and the band. But a certification, by its nature, is easy to fabricate and as such cannot be admitted in lieu of official receipts. Hence, the reduction of the burial expense from P10,000 to P1,800. The well-settled rule is that actual damages cannot be awarded based on the allegation of a witness without any competent document to support such claim - proof is required to be adequately supported by receipts (*People v. Enguito*, 326 SCRA 508 [2000]).

Even if the prosecution did not present documentary evidence to support the claim for loss of earning capacity, testimonial evidence may be sufficient to establish a basis for which the court can make a fair and reasonable estimate of damages for loss of earning capacity (*People v. Perreras*, 362 SCRA 202 [2001]). In *People v. Muyco* (331 SCRA 192 [2000]), the Supreme Court held:

To be able to claim damages for loss of earning capacity despite the non-availability of documentary evidence, there must be oral testimony that: (a) the victim was self-employed earning less than the minimum wage under the current labor laws and judicial notice was taken of the fact that in the victim's line of work, no documentary evidence is available; (b) the victim was employed as a daily wage worker earning less than the

minimum wage under current labor laws. x x x

Thus, his heirs are entitled to receive an award for lost earnings in accordance with the following formula: $\frac{2}{3} (80 - \text{ATD [age at the time of death]}) \times (\text{GAI [gross annual income]}) - 80\% \text{ GAI}.$

In the case at bench, no documentary evidence regarding the net income of the victim was offered that would serve as the basis for the computation of his net income. But the wife, however, testified that her husband used to earn 50 cavans of rice every year as a farmer. In their line of employment, no available documentary evidence could be considered to determine their net income. More so, this was not disputed by the defense. Thus, following the above formula -

$$\begin{array}{lll} = \frac{2}{3} (80 - 27 \text{ years old}) & \times (50 \text{ cavans} \times \text{P}400) & - 80\% (50 \text{ cavans} \times \text{P}400) \\ = \frac{2}{3} (53) & \times (\text{P}20,000) & - 80\% (\text{P}20,000) \\ = 35.33 & \times (\text{P}20,000) & - (\text{P}16,000) \\ = \text{P}141,320 & & \end{array}$$

the heirs of JOHN RONQUILLO are entitled to receive P141,320 as an award for lost earnings.^[14]

Issues

Undaunted, petitioner has resorted to the present recourse, imputing to the CA triple errors, viz.:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED WITH MODIFICATION, THE DECISION OF THE COURT A *QUO* DESPITE THE FACT THAT THE EVIDENCED (*SIC*) PRESENTED BY THE PROSECUTION WERE MERELY BASED ON CIRCUMSTANTIAL EVIDENCE THAT WERE TAINTED WITH INCONSISTENCIES, ASIDE FROM THE FACT THAT THE NPA PUBLICLY CLAIMS RESPONSIBILITY FOR THE KILLING OF JOHN RONQUILLO, AFTER FINDING HIM GUILTY OF MURDER AND RAPE;

II.

THAT THE POLICE AUTHORITIES OF NABAS, AKLAN, FAILED AS IT FAILED TO IDENTIFY THE ASSAILANT OF JOHN RONQUILLO, AND, IN FACT, HAS NOT INITIATED THE FILING OF FORMAL COMPLAINT BEFORE THE PROVINCIAL PROSECUTOR, AKLAN, AS THERE ARE NO WITNESSES PRESENTED BY THE FAMILY OF THE VICTIM UP TO JUNE 20, 1995, FROM APRIL 25, 1995, THE DATE THE INCIDENT OCCURRED;

III.

THE FACT THAT THE NPA HAS CLAIMED RESPONSIBILITY FOR THE KILLING OF JOHN RONQUILLO, THE HONORABLE COURT MUST