

## EN BANC

[ G.R. No. 125305, June 18, 2003 ]

### THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNABE MONTEMAYOR ALIAS "BABY," APPELLANT.

#### DECISION

##### CALLEJO, SR., J.:

This is an automatic review of the decision<sup>[1]</sup> of the Regional Trial Court of Dagupan City, Branch 41, convicting appellant Bernabe Montemayor *alias* "Baby" of murder, sentencing him to death by electrocution and ordering him to pay the heirs of the victim Leo Pontawe in the amount of P100,000 as civil indemnity; P200,000 as moral damages; P10,000 as exemplary damages; and P10,000 as consequential damages.

##### The Charge

On November 15, 1995, an Information<sup>[2]</sup> for murder was filed against the appellant which reads:

That on or about October 5, 1995 in the evening at [B]arangay Primicias, [M]unicipality of Sta. Barbara, [P]rovince of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot Leo Pontawe y Salon inflicting upon him a gunshot wound, head which caused his instantaneous death to the damage and prejudice of his heirs.

Contrary to Art. 248, Revised Penal Code, as amended by R.A. 7659.<sup>[3]</sup>

On January 24, 1996, the appellant was arraigned with the assistance of his counsel, Atty. Miguel Caguioa and pleaded not guilty to the crime charged.<sup>[4]</sup>

##### The Case for the Prosecution<sup>[5]</sup>

Late in the afternoon of October 5, 1995, Beverly Limos, a balikbayan, invited neighbors for some drinking of beer and merrymaking in her house at Brgy. Primicias, Sta. Barbara, Pangasinan. In attendance were Leo Pontawe and his wife Gracia,<sup>[6]</sup> a public school teacher; Leo's brother Nestor Pontawe; one Rudy Ferrer; Bernabe "Baby" Montemayor, a master sergeant of the Philippine Army and Gracia's second cousin; and Barangay Kagawads Antonio Pablo and Armando Santiago. Bernabe was in yellow uniform with the name "Zaplan" printed thereon. Some guests sang with the accompaniment of a videoke. Between 8:00 to 9:00 p.m., Beverly requested Leo to sing, also with the accompaniment of the videoke. He obliged. He and his wife Gracia sang together. After their duet, the couple decided

to go home. Leo handed the microphone to Bernabe, remarking, "*Bayaw, its your turn because we are going home with my wife.*"<sup>[7]</sup> Bernabe took the microphone and began to sing. However, he was enraged when the videoke suddenly stopped. Bernabe shouted. "*Vulva of your mother, who is tough here, you are folling [sic] me.*"<sup>[8]</sup> Simultaneously, Bernabe pulled a table and turned it upside down. He grabbed an empty bottle of beer grande and smashed it. He then shouted invectives at the Pontawe and Mihing families: "*Vulva of your mother, you Pontawe family, you Mihing family.*"<sup>[9]</sup> Leo confronted Bernabe and demanded to know why Bernabe was so mad at his family (Mihing was the nickname of Leo's father). To prevent the already tense situation from further escalating, Gracia prodded Leo for them to leave. As Leo was retrieving his slippers, Bernabe tried to hit him with the broken bottle. Leo parried the thrust and boxed Bernabe on the nose. They grappled for the possession of the broken bottle.<sup>[10]</sup> Petrified, Gracia pleaded to the neighbors to pacify and separate Leo and Bernabe. Randy Rosario, Nestor Pontawe, Dante Rivera and Rudy Ferrer responded and managed to separate the protagonists. Disgruntled, Bernabe turned to Leo's brother Nestor. Bernabe collared him and attempted to hit him with the broken bottle, but the latter was able to hold the hand of Bernabe. Nestor then twisted Bernabe's hand and succeeded in wresting possession of the broken bottle.<sup>[11]</sup> Uncowed, Bernabe ran after Leo and Gracia as they descended the stairs. When Leo looked back, he saw the approaching Bernabe and boxed him on the nose and mouth. Bernabe was thrown off, but was able to lean on the wall. He stood up and fought with Leo. They were separated anew, this time by Barangay Kagawads Antonio Pablo and Armando Santiago, who brought Bernabe to his tricycle. On his way to the tricycle, Bernabe warned Leo: "*Wait for me and I will come back.*"<sup>[12]</sup> Nonong, Bernabe's son, drove the tricycle and brought the latter home.

Beverly Limos, Nestor Pontawe, Randy Rosario and some other visitors decided to go to the police station to report the incident. Beverly requested Gracia to stay behind and look after her house. Gracia agreed. Gracia, Leo, Rowel Pontawe and Samuel Pontawe (another neighbor of Beverly), waited near the gate fronting Beverly's residence.<sup>[13]</sup> Berlin (Boyet) Bornillo, a contemporary of Bernabe in the Philippine Army and Nestor Pontawe's brother-in-law, joined them. Gracia stood in front of Leo, who was seated near the flower box.<sup>[14]</sup> Berlin was seated at Leo's right, while William Pontawe was seated next to Berlin. The place was lit by electric bulbs and spotlights placed on the gate and the perimeter fence of the house. As Leo and Gracia conversed with their companions, he showed the wounds he had sustained earlier during his scuffle with Bernabe.

After about thirty to forty minutes, Bernabe returned to Beverly's house, armed with a short gun. He positioned himself in a dark place near the perimeter fence which was about seven meters away from and on the right side of Gracia. Suddenly, Gracia and Berlin heard a gunshot. They turned their heads towards the direction where the gunshot emanated from and saw Bernabe pointing his gun at them and their companions.<sup>[15]</sup> It turned out that Berlin had been hit on the left side of the neck, dove to the ground and lost consciousness. Gracia frantically warned the others that Bernabe had a gun.<sup>[16]</sup> Immediately thereafter, Gracia heard another gunshot.<sup>[17]</sup> Leo was hit on the left temple and fell to the ground, mortally wounded. Unaware that Leo had been shot, Gracia told him to take cover. Bernabe menacingly moved closer to Gracia and fired his gun two more times. He

challenged the Pontawe and the Mihing families to come out: "*Paway diay siga pamilya Pontawe, pamilya Mihing.*"<sup>[18]</sup> Gracia retreated towards the road and tried to get hold of Leo's hand but when she looked at her husband, she was aghast to see blood oozing from his head, prompting her to shout: "*He was hit, he was hit!*"<sup>[19]</sup>

Berlin and Leo were brought by neighbors to the Villaflor Hospital in Dagupan City in a Mazda mini bus. Gracia, accompanied by William, rushed to the police station to report the incident. She saw Barangay Captain Adoracion Montemayor, the wife of Bernabe, and spontaneously told the latter that her husband Bernabe had just shot Leo.<sup>[20]</sup> In the meantime, Beverly's report was placed in the police blotter.<sup>[21]</sup> Despite immediate medical attention, Leo died at the hospital on October 6, 1995.<sup>[22]</sup>

On the same day, Dr. Alfredo Layno Sy performed an autopsy on the victim and submitted his findings, thus:

AUTOPSY: 4 inches circular blood clot on temporal area[e], oval shape,  $\frac{3}{4}$   
x  $\frac{1}{4}$  inches  
\*skull  
\*meninges covered with blood clot  
\*slug found in the right, posterior occipital area

PERIORBITAL HEMATOMA  
2 inches above the ear  
2 inches anterior to the L ear  
0.25 cm. around, inverted age

thumb incised wound 0.5 cm  
first finger  
knuckle [sic] areae [sic] 0.5 cm.  
between 1-2 joint - .5cm incised wound

Rigor Mortis, lividity at back, cyanosis of nailbed  
Death due to Cardiorespiratory arrest 2' to Intracranial injury 2' to  
Gunshot Wound<sup>[23]</sup>

The doctor turned over the slug he had recovered from the right posterior occipital area of the victim to SPO2 Bernardo Balberan. Meanwhile, the chief of police and policemen rushed to the scene of the crime and conducted an on-the-spot investigation. They were told that Leo was shot by Bernabe. However, the latter was nowhere to be found. Senior Police Inspector 1 (SPO1) Eduardo B. Soriano prepared the police report on the said investigation.<sup>[24]</sup> On October 7, 1995, Gracia gave a sworn statement to SPO4 Dominador Cacho in which she stated that Bernabe was wearing an aqua green t-shirt with the name "Lito Zaplan" printed on it. A criminal complaint<sup>[25]</sup> was filed with the Municipal Trial Court of Sta. Barbara, Pangasinan in Criminal Case No. 3405 against Bernabe on October 10, 1995 charging him with murder for the death of Leo. Gracia affixed her signature on the said complaint as a witness.<sup>[26]</sup> Gracia filed a motion for the issuance of a warrant for the arrest of Bernabe, and testified in support of her motion. On October 12, 1995, the trial court granted the motion and issued the warrant. Gracia later

learned that Bernabe was arrested on October 21, 1995 by the Provost Marshall of the Philippine Army.

### **The Evidence of the Accused<sup>[27]</sup>**

Bernabe denied killing Leo. He claimed that during the party, he and Leo had a quarrel about politics, during which Leo boxed him on his shoulder. He then left the place. He surmised that the only reason why the witnesses for the prosecution pointed to him as Leo's assailant was that prior to the shooting incident, he and Leo had a fight, but it was Leo who started it.

Jose Pontawe, the appellant's brother-in-law, testified that he witnessed the shooting of Leo. According to him, he saw a person, definitely not Bernabe, who ran towards the rear of his house. He could not, however, recognize the man because the place was dark at that time.

Bernabe adduced evidence that after drinking beer, he was so inebriated. He was brought home at about 10:00 p.m. on his tricycle driven by his son, who was in the company of Kagawads Antonio Pablo and Armando Santiago. It took the tricycle about fifteen to twenty minutes to reach his house, which was a kilometer away from Beverly's residence. He was so drunk and groggy that he fell asleep immediately upon arriving at his place. The two kagawads waited until Bernabe's wife arrived at about 10:00 to 10:30 p.m. and forthwith left.

Bernabe testified that at 4:00 a.m. the next day, October 6, 1995, he left his house and went to Camp Tito Abat in Manaoag, Pangasinan to follow-up his clearance for early retirement. He was thereafter confined at the V. Luna Hospital on October 14, 1995, as part of the continuing treatment of the wounds he sustained on September 16, 1981, while on active duty in the Philippine Army.<sup>[28]</sup> On October 16, 1995, after his discharge from the V. Luna Hospital, he then went to Tanza, Cavite to secure his papers from his command post.<sup>[29]</sup> On October 25, 1995, Bernabe was arrested by the Provost Marshall of the Philippine Army and detained at Fort Bonifacio.<sup>[30]</sup> He was discharged from the Philippine Army on November 16, 1995.<sup>[31]</sup> He adverted that before the incident at Beverly's residence on October 5, 1995, he and his second cousin Gracia were in good terms.

On February 27, 1996, the trial court rendered a decision finding Bernabe guilty beyond reasonable doubt of murder and sentenced him to the extreme penalty of death by electrocution:

WHEREFORE, this court finds accused guilty of the crime of murder as charged in the information in relation to RA 7659 and therefore hereby sentences him to death by electrocution and to indemnify the heirs of the deceased in the amount of P100,000.00 for the loss of life of the said victim; P200,000.00 as moral damages; P10,000.00 as exemplary damages and P10,000.00 as consequential damages.<sup>[32]</sup>

The trial court stated that Gracia and Berlin positively identified Bernabe as the assailant. The *situs criminis* was illuminated by electric bulbs on the hollow block fence of Beverly's residence. Moreover, Gracia and Berlin were both familiar with Bernabe's physical features that even if the crime was committed at nighttime, it

was not difficult for them to recognize the appellant when he fired his gun four times, and shot the victims Berlin and Leo.

The trial court gave credence and full probative weight to the positive identification made by Gracia and Berlin, of Bernabe as the assailant of Leo, and rejected the appellant's bare denial of the crime charged as well as his defense of alibi.

Bernabe, now the appellant, assails the decision of the trial court contending:

- I. That the Lower Court gravely erred in finding that the identity of the Accused-appellant as the author of the crime charged has been established beyond reasonable doubt;
- II. That the Lower Court gravely erred in not considering the inconsistencies and incredibilities of the testimonies of the prosecution witnesses.
- III. That the Lower Court gravely erred in finding the crime committed was one of murder.
- IV. Lower Court gravely erred in not giving weight to the evidence of the defense.<sup>[33]</sup>

On the first two assignments of errors, the appellant avers that the prosecution's principal witnesses are the relatives of the victim: Gracia, the surviving spouse; Randy Rosario, the nephew; and Berlin, the brother-in-law. He argues that because of their relationship to the victim, the said witnesses are biased in favor of the prosecution. Furthermore, the testimony of Gracia is incredible. It is inconsistent with her Sworn Statement executed on October 7, 1995, as well as her testimony before the MTC, in support of her motion for the issuance of a warrant of arrest against the appellant. Gracia and Berlin could not have identified him as Leo's assailant because of the following: (a) Gracia testified before the MTC that when she heard the first gunshot, her back was towards the assailant, and she ran away immediately; (b) Gracia likewise testified before the MTC that the place where the appellant hid himself before the first gunshot was dark; (c) when Berlin was hit by the first gunshot, he fell to the ground unconscious; hence, he could not have seen the appellant shoot Leo; (d) Gracia also stated before the MTC that before the first gunshot rang out, she saw that portion of the appellant's body (from the waist up to the head) facing her and her companions. This is contrary to the physical evidence that Leo was hit on his left temple; (e) also contrary to Gracia's testimony, the assailant could not have been nearer than twenty to thirty meters from where Leo was shot, considering that Dr. Alfredo Sy who performed the autopsy on the body of the victim, did not notice any gunpowder burns on the entrance wound; and (f) although the appellant was charged for the injuries sustained by Berlin, the case was archived because Berlin refused to testify for the prosecution on account of his uncertainty of the identity of the person who shot him.

The contentions of the appellant do not persuade us. By controverting the credibility and probative weight of the collective testimonies of Gracia and Berlin identifying him as the assailant of the victim, the appellant thereby questions the findings of facts made by the trial court. But case law has it that the findings of the trial court, its calibration of the testimonies of witnesses and the probative weight