

## THIRD DIVISION

**[ G.R. No. 141120, September 17, 2003 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FERNANDO BUENAVIDEZ ALIAS "NANDING BEDEA," APPELLANT.**

### DECISION

**CARPIO MORALES, J.:**

On appeal before this Court is the October 25, 1999 Decision<sup>[1]</sup> rendered by Branch 14 of the Regional Trial Court of Roxas City finding appellant Fernando Buenaquiz alias "Nanding Bedea" guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information<sup>[2]</sup> dated May 22, 1995 charged appellant with murder allegedly committed as follows:

That on or about the 12<sup>th</sup> day of February, 1995, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Ferdinand Dariagan with said weapon thereby inflicting upon the latter "stab wound located 2.5 cm. above the supra clavicular area measuring 2 cm. in length and 2 cm. depth; stab wound located below the sternum measuring 6 cm. depth and 4 cm. in length; stab wound located at the anterior axillary line, measuring 1.5 cm. depth and 2 cm. in length; stab wound 3.5 cm. in length superficial wound at posterior area of the left arm; stab wound located at the anterior mid area of the left arm, measuring 3 cm. in length and 3 cm. in depth; superficial wound 1 cm. by 1 cm. mid arm antero lateral of the left arm; and stab wound 5 cm depth by 5.5 cm. in length located 5 cm. from the lateral side of the cabital fossa", which wound had caused the death of the said Ferdinand Dariagan.

Contrary to law, with the qualifying circumstance of treachery in that the accused stab said Ferdinand Dariagan with his knife in a sudden and unexpected manner, thus employing means, methods or forms in the commission of the crime which tended directly and specially to ensure its execution, without risk to the accused arising from the defense which the said victim might have made, and the generic aggravating circumstance of evident premeditation.

That as a direct consequence of the unlawful act of the accused, the heirs of the deceased Ferdinand Dariagan suffered actual, moral and other damages in the amount that may be awarded by the Honorable Court.

Since appellant assigns inconsistencies in the testimonies of prosecution witnesses, a recital of their respective testimonies is in order.

George Patanao declared as follows: At around 9:30 p.m. of February 12, 1995, while he was buying cigarettes at a store across the street where Excelsior Ice Plant (Excelsior) is located in Barangay Dayao, Roxas City, a tricycle stopped in front of the gate of Excelsior upon which the driver alighted and went inside Excelsior. The passenger later alighted too and urinated by the roadside. As the passenger whose name he later heard from the radio to be Ferdinand Dariagan (the victim) was urinating, Patanao saw a man whom he identified to be appellant "coming from the barangay chapel" nearby. Appellant walked towards, and placed his left arm over the shoulder of, the victim on whose body he thrust "something." The victim fell to the ground.<sup>[3]</sup>

Benjamin Mamburan declared: At around 9:30 p.m. of February 12, 1995, while he was walking along Dayao Street, he saw a tricycle parked across Excelsior. From a distance of around twenty meters, he saw the victim, who was his friend, alight from the tricycle and urinate by the roadside. With the intention of greeting him, he walked towards the victim but before reaching him, appellant who came from a house near the barangay chapel walked briskly towards the victim and "clutch[ed his arm] over the shoulder of [the victim] and stabbed [the victim] several times in front of his body with a knife until the latter fell down." <sup>[4]</sup>

Dr. Milagrosa Resolosa, a city health officer of Roxas City who conducted the post mortem examination on the victim's body, declared: There were three causes of the victim's death: cardio-respiratory arrest, severe hemorrhage and multiple stab wounds, five of which were located on the left portion of the neck, middle portion of the chest, below the left armpit, two on the left arm, and two (incised) on the left arm and forearm.<sup>[5]</sup>

Alicia Dariagan, widow of the victim, testified on the civil aspect of the case.

As for prosecution witnesses PO3 Eliseo Barcelo,<sup>[6]</sup> Police Inspector Loremo Buhat<sup>[7]</sup> and PO2 Gaudencio Azarcon,<sup>[8]</sup> the prosecution and the defense stipulated that said witnesses would testify on the service on appellant of the warrant of arrest, and PO3 Edwin Basas would testify on the police blotter report.<sup>[9]</sup>

Upon the other hand, invoking alibi, appellant claimed that at the date and time of the incident he was at Barangay Dumaguít, New Washington, Aklan tending to the chickens in the farm of one Atty. Benito Salazar where he had stayed the whole day and night of February 12, 1995, he having taken over the duties of a co-employee who had injured himself earlier in the day.<sup>[10]</sup>

Corroborating appellant was his friend and co-employee Alberto de Tomas who declared that there was never any occasion that appellant left the workplace on February 12, 1995, and he (de Tomas) could not be mistaken because on that day he suffered an injury and it was appellant who helped him.<sup>[11]</sup>

Crediting the evidence for the prosecution, the trial court found the "accused's defenses of denial and alibi . . . discordant or inconsistent with his statements in his

direct testimony."<sup>[12]</sup> It thus convicted appellant by the appealed decision, the dispositive portion of which reads:

FOREGOING ESTABLISHED FACTS CONSIDERED, the Court finds accused Fernando Buenavidez alias "Nanding Bedea" GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Sec. 6 of Republic Act 7659 amending Art. 248 of the Revised Penal Code and is sentenced to suffer the penalty of reclusion perpetua. He is ordered to indemnify the heirs of the deceased Ferdinand Dariagan in the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Sixty-Three Thousand Two Hundred Seventy Pesos (P63,270.00) as actual damages and One Hundred Thousand Pesos (P100,000.00) as moral damages and to pay the costs.<sup>[13]</sup>

In his appeal, appellant bewails the trial court's brushing aside of his defense of alibi despite, so he claims, the existence of "manifest inconsistencies" in the testimonies of the prosecution witnesses.<sup>[14]</sup>

Appellant draws attention to Patanao's testimony that the victim was stabbed "only once" (appellant's words) as contradicting that of Benjamin Mamburan's and of the findings of Dr. Milagrosa Resolosa.<sup>[15]</sup>

And appellant argues that in light of the account of the prosecution witnesses, the injuries which the victim suffered should have been located on the right side of his body and not on the left side as indicated in the result of the victim's post-mortem examination. He cites the eyewitnesses' account that he placed his left arm over the shoulder of the victim, thereby "seem[ing] to indicate that [appellant] was on the right side of the [victim]," in which case the wounds should have been located on the right side of the body.<sup>[16]</sup>

These inconsistencies, appellant claims, indicate that Patanao and Mamburan did not actually witness the actual stabbing but merely fabricated a story.<sup>[17]</sup>

Appellant's appeal fails. The pertinent portion of Patanao's testimony reads:

Q: Upon reaching the person urinating, what happened next?

A: I clearly saw, sir, that person coming from the barangay chapel upon reaching the person urinating by the side of the road placed his left arm over the shoulder of one urinating and at **the same time** thrusting something **towards** the person urinating.

x x x

A: I saw clearly that the person coming from the barangay chapel upon reaching the person urinating by the side of the road, he placed his left arm over the shoulder of the person urinating and **at the same time** thrusting something towards the person urinating or **in front of the body of the victim.**<sup>[18]</sup> (Emphasis and underscoring supplied)

There is nothing in the above-quoted testimony to indicate that Patanao declared that the victim was stabbed by appellant "only once." The following portion of Patanao's testimony in fact shows that the victim was stabbed several times:

Q: Now, when that person urinating [was] stabbed several times by the accused, what happened to that person?

A: I saw that person urinating fell to the ground after [being] stabbed.<sup>[19]</sup>

As to the location of the stab wounds, from the same above-quoted testimony of Patanao, he recounts having seen appellant "plac[ing] his **left** arm over the shoulder of the person urinating and at the same time thrusting something **towards** the person urinating or in front of the body of the victim." Since the placing of appellant's **left** arm over the shoulder of the victim and the thrusting of "something **towards** the person urinating . . . or **front of the body of the victim**" were simultaneous, then, as gathered from Patanao's testimony, appellant could have been facing the victim when he placed his left arm over the shoulder of the latter, and that explains why the six of the seven stab wounds were located at the left portions of the victim's body. Even Mamburan testified, as stated earlier, that appellant stabbed the victim "in front of his body."

But whether appellant was facing or at the back of the victim, as opined by Dr. Resolosa, the location of the wounds would have been the same.<sup>[20]</sup>

As for the trial court's discrediting of appellant's alibi, it is settled that the issue of credibility is a question best addressed to the province of the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying, which opportunity is denied to appellate courts. Where, as in the prosecution witnesses' case, they positively identified appellant as the malefactor and categorically and consistently gave a credible account of what they witnessed, their testimonies should indeed prevail over appellant's alibi.<sup>[21]</sup>

Additionally, as the trial court also found, the eyewitnesses had no ill-motive to testify falsely against appellant.<sup>[22]</sup> Patanao, who was not a resident of Barangay Dayao, Roxas City, he going to said place only occasionally, has had no encounter with the victim and knew appellant only as the person taking care of the fighting cocks of one Jun-jun Borda.<sup>[23]</sup> Mamburan on the other hand does not know appellant personally and saw him only in the afternoons of February 6 up to 11, 1995 gathering fighting cocks "beside the road."<sup>[24]</sup>

And now, a determination of the penalty to be imposed upon appellant.

The prosecution was able to establish that appellant's attack was sudden and unexpected and without the slightest provocation on the part of the victim who was at the time urinating. There is thus a clear case of treachery, as alleged in the information.<sup>[25]</sup>

As for the other aggravating circumstance alleged in the information — evident premeditation, for it to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time the accused decided to