388 Phil. 129

FIRST DIVISION

[G.R. No. 120170, May 30, 2000]

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. RESTITUTO DIMAILIG y CARAIG, accused-appellant.

D E C I S I O N

PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Kalookan City, Branch 123 convicting Restituto Dimailig y Caraig of murder, sentencing him to *reclusion perpetua*, and to pay the heirs of the victim, Arlene Guavez, the amount of fifty thousand pesos (P50,000.00) as indemnity, fifty thousand pesos (P50,000.00) as moral damages, twenty six thousand eight hundred pesos (P26,800.00) as actual damages and three hundred thousand pesos (P300,000.00) as payment for loss of earning capacity.

On October 5, 1993, Second Assistant City Prosecutor Eulogio C. Mananquil, Jr. of Kalookan City filed with the Regional Trial Court, Branch 123, Kalookan City an information charging Restituto Dimailig y Caraig with murder, committed as follows:

> "That on or about the 3rd day of October 1993 in Kalookan City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack and stab with a bladed weapon (balisong) on the chest of one ARLENE GUAVES Y SEVILLANA, thereby inflicting upon the latter serious physical injuries which caused her death (DOA) at the MCU Hospital, this city.
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> "Contrary to law."[2]

At the arraignment on March 10, 1995, accused Restituto Dimailig pleaded not guilty to the crime charged.[3] Trial ensued.

The record reveals that Arlene Guaves,[4] 22 years old, worked as a saleslady at the Bagallon General Merchandising and Gift Shop on the 2nd floor of the LRT Northmall in Kalookan City. According to Josephine Sevillana, sister of the victim, accused Restituto Dimailig courted Arlene for a year, but she was uncertain if the two became sweethearts.[5]

At around 3:45 in the afternoon of October 3, 1993, Josephine Sevillana called up Arlene, who was on duty as a saleslady, to confirm their agreement to meet that afternoon. Arlene, sounding fearful, asked Josephine to go to Northmall, revealing that accused Dimailig had previously threatened to kill her.

At around 5:00 in the afternoon, Josephine arrived at the Northmall. As she made her way to the gift shop, she noticed accused Dimailig standing in front of the Fuji Film Store beside the shop. Josephine entered the gift shop and found Arlene alone inside. She did not see Arlene talk to accused Dimailig outside.

At around 5:30 p.m., Arlene and Josephine prepared to close the gift shop. Then, Arlene asked Josephine to accompany her to the comfort room which was around five to six meters from the shop. They were walking towards the comfort room when, suddenly, accused Dimailig appeared. He pulled Arlene away from Josephine. Then, he stabbed Arlene's chest with a balisong several times. Arlene fell to the ground.

People milling around the mall started gathering around accused Dimailig. Moments later, several persons began to maul him.

Josephine and some salesladies brought Arlene to the Manila Central University Hospital (MCU), but Arlene was pronounced dead on arrival.[6]

PO3 Rogelio Avila and PO3 Conrado Tuazon were directing traffic along Rizal Avenue at the LRT Grand Central station when a commotion across the street at the Northmall caught their attention. PO3 Avila saw a man being mauled by several persons on the island of the street. PO3 Avila and PO3 Tuazon pacified the crowd and learned that the man had stabbed a woman. Some persons shouted, "*Nakasaksak ng babae!*" PO3 Avila handcuffed the man and apprised him of his constitutional rights. The man who sustained injuries was silent. PO3 Avila invited bystanders to the police station to give their statements regarding the incident but nobody obliged. Acting upon information that the victim was inside the mall, PO3 Tuazon entered Northmall but discovered that bystanders had brought the victim to the hospital. He went outside and, together with PO3 Avila, hailed a passenger jeepney. They took the man, identified as accused Dimailig, to the hospital.[7]

The body of Arlene Guaves was brought to the morgue of the Dulce Funeral Parlor. Feliñito Sevillana, the victim's father, identified it as the body of his daughter Arlene. He consented to the conduct of an autopsy.[8]

Dr. Florante F. Baltazar, Chief Medico-Legal Officer of the PNP Crime Laboratory conducted the autopsy and found that the victim sustained twelve (12) stab wounds on the chest, an abrasion, and an incise wound.[9] He indicated in Medico-Legal Report No. M-1710-93 that multiple stab wounds caused Arlene's death. He opined that a pointed and bladed instrument, such as a *balisong*, could have caused the injuries and that the victim could have been attacked frontally.[10]

Meanwhile, SPO1 Cesar Antonio received a call regarding a victim of violence brought to MCU Hospital.[11] Upon arrival at the hospital, he realized that the victim had died. However, he found the victim's sister, Josephine Sevillana, at the hospital and instructed her to proceed to the police headquarters to give a statement concerning the incident.

At the police headquarters, traffic officers Tuazon and Avila turned over accused Dimailig to SPO1 Cesar Antonio. When SPO1 Antonio summoned Josephine Sevillana, she pointed to accused Dimailig as the person who stabbed her sister.

Accused maintained his silence. When SPO1 Antonio asked accused Dimailig why he killed Arlene, he stated, "*Bata ko siya, niloko niya ako kaya sinaksak ko siya.*"[12]

Josephine Sevillana executed a written statement the following day, October 4, 1993, positively identifying accused Dimailig as the one who stabbed her sister Arlene. Her mother, Sonia Sevillana y Garchitorena, also executed a statement that day.

Since Arlene Guaves was separated from her husband, her family took care of her wake and burial. For the 7-day wake, the Sevillanas spent P1,000 a night. As shown by an agreement with Dulce Memorial Service, the family spent P10,239.40 for funeral services.[13] They paid fees to the city treasury in the amount of P52.00[14] and to the La Loma Catholic Cemetery for the grave and niche, P600.00.[15] They spent P5,000.00 for the tomb but no receipt was issued by the person who constructed it. For the funeral, they hired seven (7) passenger jeeps at P600.00 each but no receipt was issued for that amount.

According to Sonia Sevillana, Arlene was employed as a saleslady at the Bagallon Gift Shop earning one thousand three hundred pesos (P1,300.00) a month. Sonia came to know of that fact from Arlene herself and her employer, Mrs. Bagallon, who voluntarily gave Sonia a certification on April 13, 1994 that before her death, Arlene was in her employ.[16] Sonia testified that the pain caused by the death of her daughter Arlene could not be compensated and that Arlene left a child whom Sonia has to care for.[17]

Testifying as the sole defense witness, accused Dimailig, 27 years old, asserted that Arlene was his girlfriend. They first met on November 21, 1991 when she bought pandesal from the bakery owned by accused Dimailig, located in Novaliches. Accused Dimailig asked her address, intending to write to her when he leaves for Kuwait. Arlene obliged him but did not inform him that she was married and a mother to a child.

Accused Dimailig, still unmarried, started courting Arlene. According to him, they became sweethearts on January 22, 1992. They dated regularly and Arlene often visited him at home. He called her "Mama" or "Sweetheart" and she sent him letters, pictures, and cards.[18]

Accused Dimailig went to Kuwait, stayed there for a year, and returned to the country on July 9, 1993. At this time, he discovered that Arlene was married but separated from her husband, and had a child with her husband. He was uncertain if Arlene and her husband had the intention of reconciling with each other. However, he knew that Arlene often talked to her husband and that she met with him several times.

At around 4:00 in the afternoon of October 3, 1993, he was at the office of Exponent in Buendia, applying for work abroad. He left at 4:30 p.m. and proceeded directly to the Northmall Shopping Center to tell Arlene that he would be leaving for Jeddah. When he disembarked at the LRT station, he saw a crowd milling around the mall. Curious, he elbowed his way to the object of the crowd’s attention and saw Arlene soaked in blood. He approached her and embraced her. Suddenly, he found himself being engulfed by the crowd. Around twenty (20) people hit his face and

chest, making him lose consciousness. He regained consciousness at the Kalookan General Hospital, where two policemen brought him. Afterwards, he was taken to the police station. He claimed that the policemen failed to inform him of his constitutional rights. He said that he did not give any statement to the police admitting to the crime. He also denied being identified by Josephine Sevillana at the police headquarters. He declared his love for Arlene Guaves and reiterated that he could never commit the murder for which he was charged with.

On March 30, 1995, the trial court rendered a decision finding accused Dimailig guilty beyond reasonable doubt of murder, qualified by taking advantage of superior strength and aggravated by treachery and evident premeditation. The trial court decreed as follows:

> "WHEREFORE, this Court finds the accused, Restituto Dimailig y Caraig guilty beyond reasonable doubt and sentences him to suffer imprisonment of reclusion perpetua and to pay the heirs of Arlene Guavez (sic) the sum of P50,000.00 as indemnity; pay moral damages in the sum of P50,000.00; pay actual damages in the sum of P26,800.00 and the indemnity for the loss of earning capacity of the deceased in the amount of P300,000.00.
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> "SO ORDERED."[19]

Hence, this appeal.

In his brief, accused-appellant Dimailig questioned the credibility of witness Josephine Sevillana, and stated that her testimony was replete with inconsistencies.

He pointed out that Josephine first declared that Arlene and accused-appellant had a relationship but later changed her answer to the effect that she did not know if indeed they had a relationship. Thereafter, she testified that she did not know anything about it.

Accused-appellant also imputed doubt as to whether Josephine was actually present at the Northmall on the day of the stabbing and witnessed the attack against the victim. He alleged that Josephine was inconsistent in describing the manner in which the deceased Arlene was stabbed for she initially declared that accused blocked their way and pulled Arlene before stabbing her, then later testified that accused-appellant attacked them from behind.

Such attempts to discredit the witness must fail.

Josephine's testimony on the relationship between accused-appellant and the victim Arlene Guaves is credible. She knew accused-appellant was courting her sister but she did not know if the two became sweethearts. Indeed, Josephine could be expected only to testify on matters that were evident to her; she could not be expected to testify on a relationship that she was not privy to. A witness can testify only on facts which he knows of his own personal knowledge.[20]

Furthermore, a witness is not expected to remember an occurrence with perfect recollection of minute details; even the most truthful witnesses often err and issue confused statements.[21] By the suddenness of the assault, Josephine could not be