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FIRST DIVISION

[G.R. No. L-32574. June 29, 1979]

THE PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ARMANDO ESTERO Y BASCO, ET AL.,** *defendants,* **ARMANDO ESTERO Y BASCO,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY; CONFLICTING STATEMENTS ON INCONSEQUENTIAL DETAILS WILL NOT RENDER THE TESTIMONY UNTRUTHFUL OR INCREDIBLE; CASE AT BAR.**— From the circumstance that appellant also tried to stab the witness when the latter went to pacify him (appellant), the witness felt so certain in his knowledge that it was appellant who stabbed the victim, for him to feel sure and correct in saying that he saw the deceased stabbed by appellant, although not perhaps at the very moment that the instrument was moving towards the victim's body which act should take even less than a split second to do. Clearly, the seeming discrepancy as pointed out is far from sufficient to render the witness' testimony untruthful, much less incredible. The important fact common in the two supposedly conflicting statements is that appellant stabbed the deceased, and whatever inconsistencies there are, same relate to inconsequential details that do not affect credibility.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS THEREOF BY THE TRIAL COURT DESERVE RESPECT; REASONS THEREFOR.**— The finding of credibility of witnesses by the trial court, as when in this case, the testimony of the state eyewitness, Antonio Villanueva, was given full faith and credence by the trial court, is entitled to great weight and respect, not only by reason of its having had the opportunity to hear and observe the witness testify in court (*People vs. Payao*, 68 SCRA 70; *People vs. Tatlonghari*, 27 SCRA 726; *People vs. Resayaga*, 54 SCRA 350, 360), but no motive was shown why the lone witness for the prosecution should be induced to testify falsely against appellant who stood charged with the grave offense of murder, knowing that his testimony, if false, could unjustly send appellant behind bars for life, if not to the execution chamber.

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3. **ID.; ID.; EXTRA-JUDICIAL CONFESSION; EXCULPATORY TONE OF THE STATEMENT AND THE ABUNDANCE OF DETAILS ARE *INDICIA* OF VOLUNTARINESS.**— The exculpatory tone of the statement and the abundance of details it contained which appellant alone could have furnished are *indicia* of voluntariness which make the statement perfectly admissible.

4. **ID.; ID.; ID.; WHEN CORROBORATED WITH THE PROOF OF *CORPUS DELICTI*, SUFFICIENT TO SUSTAIN CONVICTION; CASE AT BAR.**— Corroborated with proof of *corpus delicti*, the statement would suffice to support conviction. More than this, there is the eyewitness testimony of a credible witness, Antonio Villanueva.

5. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT PRESENT IN CASE AT BAR.**— The state evidence on the relative positions of the appellant and the victim, according to the testimony of Antonio Villanueva, shows that they were face to face. The suddenness of the attack which was the basis of the trial court's appreciation of the qualifying circumstance of treachery is negated by the statement of appellant given to Patrolman Sta. Maria that the stabbing of the deceased was preceded by the latter's act of drawing a stabbing instrument (*panaksak*) before appellant himself drew his own and stabbed the deceased. This statement, presented as it was as evidence by the prosecution must have to be taken as true despite appellant's repudiation thereof, and therefore should work against the prosecution, and in favor of the appellant, at least in this particular instance relative to the supposed existence of treachery to qualify the killing to murder.

D E C I S I O N

DE CASTRO, *J.*:

Appeal from the decision of the Court of First Instance of Quezon City (Branch IV), interposed by Armando Estero y Basco, imposing upon him the penalty of *reclusion perpetua* for the crime of murder, and to pay ₱12,000.00 as indemnity to the heirs of the deceased, Gregorio Dira, and costs.

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The following facts, quoted from Appellee's Brief, appear to have been duly established by the evidence of the prosecution:

"On March 27, 1969, between 8:00 to 9:00 o'clock in the evening, Antonio Villanueva, Boy Pengson, Gregorio Dira and one Gary were at Daling's Restaurant at the corner of Timog and De los Santos Avenue, Quezon City (pp. 8-9, 13 tsn, Aug. 28, 1969, Naval). They were seated at the table and eating inside the restaurant (p. 9, tsn, Aug. 28, 1969, Naval). Gregorio Dira then stood up and repaired outside through the door to spit (p. 8, tsn, Aug. 28, 1969, Naval). While outside, he was suddenly hit and stabbed in the belly by Armando Estero with a weapon which looked like an icepick (pp. 7-8, tsn, Aug. 28, 1969, Naval). Antonio Villanueva who was 12 to 15 meters away from the stabbing scene, and which was well-lighted by the electric light of the Daling's Restaurant, rushed to the two protagonists to pacify them (pp. 13-15, tsn, Aug. 28, 1969, Naval). When Armando Estero who was then in company with four others tried to stab him too, he withdrew and ran away (p. 15, tsn, Aug. 28, 1969, Naval).

"The police arrived after the incident and since the assailant and his companions were no longer there, Antonio Villanueva informed them that it was Armando Estero who stabbed Gregorio Dira, and that he had four companions at the time (p. 9, tsn, Aug. 28, 1969, Naval). Antonio Villanueva called for a taxi and brought the victim Gregorio Dira to the Labor Hospital (p. 9, tsn, Aug. 28, 1969, Naval); the policemen on the other hand went after the assailant and his companions (p. 9, tsn, Aug. 28, 1969, Naval). While Gregorio Dira was being attended to at the Labor Hospital, Antonio Villanueva left to inform the sister and brothers of Gregorio Dira as to what happened (p. 10, tsn, Aug. 28, 1969, Naval). Later, he brought them to the hospital where Gregorio Dira was in a serious condition (pp. 9-10, tsn, Aug. 28, 1969, Naval). Upon advice of the medical staff of the San Lazaro Hospital, Gregorio Dira was brought to the Jose Reyes Memorial Hospital (pp. 11-12, tsn, Aug. 28, 1969, Naval). Despite medical attendance, however, Gregorio Dira expired on March 29, 1969 at 6:30 p.m. by reason of the stab wounds he sustained (Exh. "E", p. 5, rec. of Exhibits).

"After a month, the Quezon City police were finally able to arrest Armando Estero and Ernesto Flores, Jr. as suspects (p. 2, tsn, Aug. 13, 1969, Naval). Pat. Pastor Sta. Maria took down the written statements of these persons in connection with the death of Gregorio

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Dira (Exhs. "C" and "D", pp. 4 & 5, rec.), as well as the statements of Antonio Pengson and Antonio Villanueva (Exhs. "A" and "B", pp. 1-3, rec.)

"Pat. Pastor Sta. Maria on the witness stand categorically declared that Exhibit "C" was given by accused Armando Estero without force and intimidation employed upon his person, and that the same was written in Tagalog after being assured by Armando Estero that he was conversant in Tagalog (pp. 3-4, tsn, Aug. 13, 1969, Naval). In his statement, Armando Estero admitted that he was inside Daling's Restaurant in Quezon City on the night of March 27, 1969; that when he was eating a person approached him asking money to buy liquor and because he had no money he did not give the person any; that when he was leaving the restaurant, the person who asked money from him and whose name he does not know followed him and boxed him until he fell; that because of this, he brought out his icepick and stabbed the person who was asking money from him; and that when another person tried to attack him, he also stabbed the former (Exhs. "C" and "C-1", pp. 3-4, tsn, Aug. 13, 1969, Naval)."

The inculpatory facts as above narrated were established by the testimony of state witness Antonio Villanueva, finding support and corroboration in appellant's own statement (Exh. C) taken down after his arrest by Pat. Pastor Sta. Maria, admitting having stabbed the deceased, which thereby destroyed completely appellant's eleventh-hour defense of alibi.

In his present appeal, appellant, of necessity, finds no other recourse than to try to impugn the credibility of witness, Antonio Villanueva, and claim involuntariness of his extra-judicial confession (Exh. E) by alleging violence or maltreatment employed upon him, and to insist on the veracity of his alibi.

1. In trying to impress lack of credibility on the testimony of Antonio Villanueva, appellant would go as far as to suggest this eye-witness of the prosecution was not present during the stabbing incident. He attempts to accomplish this feat with the usual means of showing what he claims to be contradictions and inconsistencies in the assailed testimony, and bias or partiality on the part of the witness himself. Thus, appellant cites the statement of Antonio Villanueva (Exh. B) in which he declared that he saw Gregorio Dira stabbed by two men, which allegedly

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conflicts with the witness' testimony in court that he saw Gregorio Dira already down, and that when he tried to pacify appellant, the latter tried to stab him, forcing him to run away.

From the apparent conflict as thus shown, appellant would now claim that there was no "certitude and clarity" as to who actually stabbed the deceased. This is far from the truth, as may readily be gleaned from the testimony of Antonio Villanueva, in which his statement (Exhibit B), that he saw Gregorio Dira stabbed by two men, was clarified in that he saw Gregorio Dira already down. From the circumstance that appellant also tried to stab the witness when the latter went to pacify him (appellant), the witness felt so certain in his knowledge that it was appellant who stabbed the victim, for him to feel sure and correct in saying that he saw the deceased stabbed by appellant, although not perhaps at the very moment that the instrument was moving towards the victim's body which act should take even less than a split second to do. Clearly, the seeming discrepancy as pointed out is far from sufficient to render the witness' testimony untruthful, much less incredible. The important fact common in the two supposedly conflicting statements is that appellant stabbed the deceased, and whatever inconsistencies there are, same relate to inconsequential details that do not affect credibility (*People vs. Verzo*, 65 SCRA 324).

Further attempt of appellant to discredit Antonio Villanueva consists in branding as preposterous the latter's testimony that he "pointed" to Armando and company when policemen arrived, since appellant and company had already left. As correctly observed by the Solicitor General, the rational interpretation of the cited testimony is that Antonio Villanueva named or mentioned appellant and company as the culprits to the policemen that arrived after appellant and his companion had gone. The word "pointed" was apparently the literal translation given by the interpreter for the Tagalog word "*itinuro*" which the witness, testifying in the dialect, must have used in identifying appellant as the knife-wielder not in "pointing" at the appellant to the policemen who arrived.

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Similarly, appellant attempts also to discredit the witness, Antonio Villanueva, by citing an alleged inconsistency in his testimony that he was facing the wall, with what he later said that he could see what happened because he was not exactly facing the wall. Again, the real import of the witness' testimony is that in their seating arrangement over the dining table, Villanueva's face was towards the wall, but certainly his eyes were not nailed towards the wall as not to be able to turn around his head and see at other directions, such as the place of the stabbing.

Even more unavailing is appellant's trying to make so much of the witness' statement that it could have been five minutes from the time Gregorio Dira stood up from the dining table to the time he was stabbed outside the restaurant, but that upon actual demonstration in open court, the time-lapse was estimated as only five seconds. It is clear that the witness' estimate of five minutes was faulty, compared to his actual demonstration of the time-lapse in court, which would be considered as the more accurate and reliable, and not in the least affecting adversely his credibility. The same thing may be said of what appellant would consider as another contradiction in the witness' statement in Exhibit "B" that he was watching pinball when Gregorio Dira was stabbed, compared to his testimony in court that he was eating when the victim was stabbed. There is nothing impossible for the witness to be eating and watching the pinball at the same time.

The contradictions pointed to as such by appellant would thus appear to be more apparent than real, and they refer to inconsequential details that do not impair credibility (*People vs. Pacala*, 58 SCRA 370, 378). What is more, the finding of credibility of witnesses by the trial court, as when in this case, the testimony of the state eyewitness, Antonio Villanueva, was given full faith and credence by the trial court, is entitled to great weight and respect, not only by reason of its having had the opportunity to hear and observe the witness testify in court (*People vs. Payao*, 68 SCRA 70; *People vs. Tatlonghari*, 27 SCRA 726; *People vs. Resayaga*, 54 SCRA 350, 360), but no motive was shown why the lone witness for the prosecution

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should be induced to testify falsely against appellant who stood charged with the grave offense of murder, knowing that his testimony, if false, could unjustly send appellant behind bars for life, if not to the execution chamber.

2. We find also appellant's police statement (Exhibit "C") confirmatory of the testimony of Antonio Villanueva. His claim of maltreatment to which he had allegedly been subjected to during the interrogation to force him to sign said statement under oath is not easily believed. The exculpatory tone of the statement and the abundance of details it contained which appellant alone could have furnished are *indicia* of voluntariness which make the statement perfectly admissible (*People v. Tomas Navasca, et. al.*, No. L-28107, March 15, 1977, 76 SCRA 71. *People v. Enrique Paras and Felicisimo de Jesus*, No. L-23111, March 29, 1974, 56 SCRA 248, *People v. Ventura*, No. L-32716, Dec. 1, 1977, 1 Philajur 292, *People v. Ty Sui Wong, et al.*, No. L-32529, May 2, 1978, 83 SCRA 125.) Corroborated with proof of *corpus delicti*, the statement would suffice to support conviction. More than this, there is the eyewitness testimony of a credible witness, Antonio Villanueva.

However, as observed by the Solicitor General, the contention of appellant that, if at all he deserves conviction, it should be only for homicide not murder, is well-founded. The state evidence on the relative positions of the appellant and the victim, according to the testimony of Antonio Villanueva, shows that they were face to face. The suddenness of the attack which was the basis of the trial court's appreciation of the qualifying circumstance of treachery is negated by the statement of appellant given to Patrolman Sta. Maria that the stabbing of the deceased was preceded by to latter's act of drawing a stabbing instrument (*panaksak*) before appellant himself drew his own and stabbed the deceased. This statement (Exhibit "C"), presented as it was as evidence by the prosecution must have to be taken as true despite appellant's repudiation thereof, and therefore should work against the prosecution, and in favor of the appellant, at least in this particular instance relative to the supposed existence of treachery to qualify the killing to murder.

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WHEREFORE, the guilt of the appellant having been proved beyond reasonable doubt, the judgment appealed from is affirmed, but modified as to the crime committed which is that of simple homicide as submitted by the Solicitor General, and not murder as found by the trial court. Accordingly, the penalty is reduced from *reclusion perpetua* to an indeterminate penalty of from (8) years (1) day of *prision mayor* as minimum, to (14) years, (8) months and (1) day of *reclusion temporal* as maximum. So modified, the judgment appealed from is affirmed in all other respects. Costs against appellant.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-32599. June 29, 1979]

EDGARDO E. MENDOZA, *petitioner, vs.* **HON. ABUNDIO Z. ARRIETA, Presiding Judge of Branch VIII, Court of First Instance of Manila, FELINO TIMBOL, and RODOLFO SALAZAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; *RES JUDICATA*; REQUISITES.— Well-settled is the rule that for a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: (1) it must be a final judgment; (2) it must have been rendered by a Court having jurisdiction over the subject matter and over the parties; (3) it must be a judgment on the merit; and (4) there must be, between the first and second actions, identity of parties, identity of subject matter and identity of cause of action.