

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AGRIPINO BUNSOL AND ROMAN DE CASTRO,
ACCUSED-APPELLANTS.**

G.R. No. L-33344. March 25, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by defendants-appellants Agripino Bunsol and Roman de Castro from the decision of the Court of First Instance of Quezon, Branch II, dated December 29, 1970, the dispositive portion of which reads:

"VIEWED IN THE LIGHT OF ALL THE FOREGOING, the court finds the accused Agripino Bunsol and Roman de Castro guilty beyond reasonable doubt of the crime of murder as charged. There being no mitigating or aggravating circumstance, the court hereby sentences said accused Agripino Bunsol and Roman de Castro to suffer the penalty of Reclusion Perpetua; to indemnify the widow, jointly and severally, in the amount of P12,000.00 for the death of her husband; with the accessories of the law and to pay the costs proportionately." (Italics supplied)

The facts of this case are set forth in appellee's brief filed by the Solicitor General, as follows:

"At about 5:30 o'clock in the early morning of April 2, 1967 Juanito Miñas, together with Apolinario Punzalan, Ignacio Visco, and Claro Mia, were in the house of a neighbor, Telesforo Bunsol, in barrio Buenavista, Candelaria, Quezon, to visit the latter's wife who had just given birth (pp. 22, 29, t.s.n., Ignacio). Agripino Bunsol and his son-in-law, Roman de Castro, were also there visiting (pp. 23, 31, t.s.n., id.). After Miñas, Punzalan, Visco, and Mia had left at about 6:00 o'clock that morning, they were joined by Agripino Bunsol, who invited the group to have coffee in his house which was only around 200 meters away from the house of Telesforo Bunsol, which invitation was accepted (pp. 14, 23, t.s.n., id.). While thus in the house of Agripino, there developed a heated argument between Agripino and Miñas concerning politics, in the course of which Roman de Castro, who lived with his father-in-law, went down the house through the kitchen door. Apparently scared by said heated discussion, Claro Mia and Ignacio Visco left the house making their exit through the kitchen (pp. 24, 25, t.s.n., id.). After a while, Miñas, also intending to leave, walked over the balcony, followed by Apolinario Punzalan, and as the former stood in the balcony in front of the stairs while the latter was already on the ground waiting for Miñas to come down, a shot suddenly rang out from the western direction of the house, hitting Miñas at the back of the right leg, causing him to slide down the stairs toward the ground (pp. 25, 37, 38, 45, t.s.n., id.). Prosecution witness Apolinario Punzalan testified that upon hearing the first shot, he turned towards its direction and saw Roman de Castro pointing a .45 cal. short firearm at Juanito Miñas (p. 25, t.s.n., id.). Reaching the ground, Miñas managed to stand up, but Roman de Castro again fired at him two successive shots (pp. 26, 39, t.s.n., id.). At this juncture, Agripino, with a carbine, fired many shots at Miñas from a window near the stairs until the latter fell dead with face downward to the ground a few steps away from the stairs (pp. 9, 26, 42, t.s.n., id.; Exh. B, p. 7, rec.; Exh. 3, p. 5, rec.).

"Agripino Bunsol immediately went down and proposed to Roman de Castro, who was downstairs, that they report the matter to the barrio captain and together, they went to the latter's house. As their barrio captain was

not at home, they proceeded to the barrio of Cabay, Tiaong, and they told barrio captain Moises Castillo of their desire to surrender to the police. The latter went to the town of Tiaong and got a policeman, who accompanied the two to said town, and there they were turned over to the waiting Candelaria police (pp. 86, 87, 88, 107, 108, t.s.n., Ignacio; p. 4, t.s.n., Eclavea).

"Meanwhile, a team of policemen from Candelaria who came to the scene found empty shells of .45 caliber and .30 caliber in front and under the house of Agripino Bunsol, as well as live ammunition strewn in the premises (pp. 58, 59, 61, 62, t.s.n., Ignacio).

"That same day April 2, Dr. Juan Cedeño, municipal health officer of Candelaria, performed a post-mortem examination on the body of the victim, whom he found to have sustained nine (9) gunshot wounds, as follows:

- Gunshot wound, 7 mm. in diameter at the left parietal region 2 cm. directly above the left ear thru and thru coming out at the opposite side 10 cm. above the right ear.
- Gunshot wound 7 mm. in diameter one inch lateral and at the level of the right eye, thru and thru coming out at the occipital region.
- Gunshot wound about 12 cm. diameter at the chest left side 5 cm. below the left nipple and 4 cm. lateral to the midline of the body traversing the body, the slug lodge at the back of the left scapular region 7 cm. from the posterior midline just beneath the skin.
- Gunshot wound about 7 cm. in diameter, at the chest right side of the level of the 10th rib 3 cm. from the midline of the body, thru and thru coming out as irregularly circular lacerated wound at the level of the first lumbar vertebra 2 cm. from the posterior midline.
- Gunshot wound, about 7 mm. in diameter, at the anterior axillary line left side at the level of the 12th rib thru and thru coming out at the back of the level of the 4th lumbar vertebra 4 cm. from the posterior midline left side.
- Gunshot wound, about 7 mm. in diameter at the abdomen at the level and 5 cm. lateral to the navel left side thru and thru coming out at the gluteal region 3 cm. from the posterior midline and at the level of the 2nd sacral bone.
- Gunshot wound, about 10 mm. in diameter at the right iliac region (M. Burney's Pt.) thru and thru coming out at the posterior side of the right thigh 8 cm. below the gluteal fold.
- Gunshot wound about 7 mm. in diameter at the right thigh anterior at the level of inguinal region thru and thru coming out at the posterior side of the same thigh 16 cm. below the gluteal fold.
- Gunshot wound, about 7 mm. in diameter at the posterior middle 3rd of the right leg thru and thru coming out at the anterior aspect as a lacerated elongated wound about 8 cm. long.

CAUSE OF DEATH: Brain injuries, severe hemorrhages, secondary to multiple gunshot wounds.' (Exh. A, p. 8, rec.).'

"According to Dr. Cedeño, of the nine wounds which were all serious, wounds 1 and 2 were fatal as no amount of medical assistance could have saved the victim from dying of said wounds. The wounds bearing no powder burns could, according to Dr. Cedeño, have been inflicted by more than one firearm, particularly a carbine and .45 cal. bullets (pp. 53, 54, 55, 59, t.s.n., Ignacio).

"On April 6, 1967, Apolinario Punzalan and Ignacio Visco executed affidavits naming Agripino Bunsol and Roman de Castro as the assailants of the deceased (Exhs. 1, 13, pp. 3, 4, rec.)."

Appellants contend in this appeal that the trial court erred:

1. In convicting appellants notwithstanding variance between the allegation in the Information and the proof submitted; and
2. In giving more credence to the testimony of the witnesses for the prosecution and in "disregarding the testimonies of Police Investigator Cpl. Manuel Legaspi of the Candelaria Police Force, Dr. Jose M. Sagullo of the Community Clinic of Candelaria, and Barrio Captain Moises Castillo of Cabay, Tiaong, Quezon," thus rejecting Agripino Bunsol's claim of self-defense and Roman de Castro's alibi;

I

As regards the first assigned error, it is argued for the appellants that, while the Information alleges that Agripino Bunsol and Roman de Castro shot at Juanito Miñas, the former with a caliber .45, and the latter, with a carbine rifle, the prosecution proved the reverse in that the caliber .45 was used by De Castro and the carbine by Bunsol, which circumstance, in the view of said appellants, should entitled them to an acquittal, for failure of the prosecution to prove what was alleged in the Information.

Appellants' argument cannot be sustained. Minor variance between the Information and that established by the evidence in the kind or caliber of the firearms used in killing the deceased did not, in any manner, alter the nature of the offense. The description of the firearm used does not all determine or qualify the crime committed or the severity of the penalty to be imposed. The kind of weapon employed in the killing was not even an essential ingredient of the offense.

II

We also find no merit in appellants' second, third and fourth assignment of errors.

In refusing to accord full faith and credence to the testimony of the witnesses for the defense, the trial court gave the following reasons:

"The accused Agripino Bunsol, while on the witness stand, would want to show that he acted in self-defense as he was fired at first by the deceased Juanito Miñas with a caliber .45 pistol while the latter was still in the stairs and continued firing at the accused Agripino Bunsol that made the latter fire indiscriminately with his carbine through the window without aiming at the deceased Juanito Miñas. This claim of accused Agripino Bunsol is not substantiated by satisfactory evidence except the testimony of his co-accused and son-in-law Roman de Castro which testimonies of Roman de Castro and Agripino Bunsol are considered by the Court as self-serving. In the vain attempt of the defense to show that the accused Agripino Bunsol acted in self-defense police investigator Manuel Legaspi was placed on the witness stand and testified that when he went to the scene of the crime to investigate, he saw a holster on the body of the deceased Juanito Miñas, without specifying the kind of gun that would fit the holster. Paradoxically, the defense did not show any gun in court and defense witness Manuel Legaspi himself declared that he talked to the wife of the deceased and inquired whether the deceased had a gun to which the widow answered that her deceased husband did not have any gun. The testimony of Manuel Legaspi, in a sense, corroborated the evidence for the prosecution when he declared that he found under the house near the balcony shells of a caliber .30 ammunition which corresponds to that of a carbine, Exhibit '5', and also found three live ammunition of a carbine, Exhibit '4', and that he also found near the balcony and the stairs empty shells of a .45 caliber ammunition and .30 caliber ammunition. It should be remembered that prosecution witnesses Punzalan and Visco categorically said that accused Roman de Castro was on the ground by the balcony when he fired at the deceased with a .45 caliber gun. Hence, the presence of the shells of a .45 caliber ammunition on the ground near the balcony. The same prosecution witnesses also firmly declared that they saw the accused Agripino Bunsol fire at the deceased through the window, hence, the presence of carbine shells under the window near the stairs. x x x Agripino Bunsol declared that he did not inform the Candelaria Police of the facts testified to by him in court when he was investigated. It is rather

unnatural for a person investigated not to tell the investigating police what he testified to in court if they were true. Why did he not tell the police investigator that he acted in self-defense because he was fired at by the deceased? It is rather unnatural and contrary to human nature and behavior for one not to tell the police what the accused Agripino Bunsol declared in court, considering that he is claiming self-defense when the first reaction of a person investigated of a crime is to explain his side of the case. If what he declared in court were true, why did he not declare the same in the municipal court during the preliminary investigation, instead of waiving his right to preliminary investigation? This circumstance led the court to believe that the testimony of Agripino Bunsol in court is a concoction, considering the lapse of time that said accused testified in court which is more than sufficient for the accused to concoct his story." (pp. 295-298, rec.)

Apart from the foregoing, We find that the prosecution's theory is also buttressed by the undisputed facts. Thus, the testimony of Apolinario Punzalan that it was appellant Roman de Castro who started the shooting when he fired with his Cal. .45 pistol at Juanito Miñas, who was then descending the stairs, hitting Miñas on the leg, is corroborated by the post-mortem findings. According to Dr. Juan Cedeño, the deceased Miñas sustained a gunshot wound about seven (7) mm. in diameter at the posterior middle 3rd of the right leg. Certainly, the circumstance that the victim was shot on the back part of the leg indicates that he was shot by an assailant from behind. If it were true that the deceased Miñas was the aggressor, it is highly improbable that he would have been hit by the bullet from Bunsol's gun on the posterior side of the leg, for it is logical to assume that he (Miñas) was then facing his intended victim when the latter returned the fire. Considering also that according to Bunsol at the time when Miñas was firing at him he was standing at the window a few feet from the former, it is rather unusual that he escaped unscathed, while his alleged aggressor was the one who sustained nine (9) gunshot wounds, two of which were fatal. Then there is the significant fact that even policeman Manuel Legaspi, who testified for the defense, failed to see any firearm of the deceased at the place of the encounter, much less could the appellants explain their inability to produce the said weapon. If the deceased really made use of a gun, it could have been easily picked up by one of the appellants, considering that he fell mortally wounded in front of the house of Bunsol. Certainly, it could not have been taken by the deceased. His critical condition rendered such supposition improbable.[1] The post-mortem findings that the gunshot wounds found on the body of the deceased were inflicted by two kinds of firearms, viz., Cal. .30 and Cal. .45, shows that there were two assailants of the victim. This certainly argues against Bunsol's claim of self-defense. Familiar in this jurisdiction is the settled rule that one who rests his case on self-defense must prove the same by clear and convincing evidence, and in doing so, he must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if it were weak, it could not be disbelieved after the accused himself had admitted the killing.[2]

Equally unpersuasive is appellant de Castro's defense that he had no participation in the shooting of Juanito Miñas. He claimed that he was sleeping at the time the deceased and his companions arrived in the house of his father-in-law, Agripino Bunsol, and he was awakened only by the sound of gunfire. He stood up and went out of the room and that was the moment when he was hit by a bullet on the right side of the neck. He jumped from the window on the eastern side of the house and went to hide in a place thirty (30) meters east of the house where he lay on the ground. After lying there for about an hour, Agripino Bunsol approached him and asked him to accompany him to report the incident. Aside from the circumstance that this claim was belied by the positive testimony of the prosecution's eyewitnesses, the same is not sufficiently corroborated. Thus, Tiaong policeman Reynaldo Sales, to whom the Barrio Captain of Cabay brought appellant Roman de Castro in order to surrender about 10:00 o'clock in the morning of April 2, 1967, and who escorted said appellant to the poblacion, never testified that said appellant had a gunshot wound. Certainly, if such injury existed, Patrolman Sales could have easily noticed it. It is true that Dr. Jose M. Sagullo testified that he treated the aforementioned injury on the neck of appellant de Castro, but he admitted that said injury could have been caused by instruments other than by a bullet. The aforecited facts, together with the circumstance that said appellant did not submit for medical

treatment the alleged injury soon after he surrendered to Patrolman Sales but waited until about midnight of the same day, buttress the suspicion that this injury might have been self-inflicted.

Finally, We find no rational explanation in the record why appellant Roman de Castro, if he was only an innocent bystander, should surrender himself to the police authorities and thereafter refuse to explain his innocent role, first, when he was investigated by the police, and later, during the preliminary investigation. Such conduct is certainly inconsistent with the normal reaction of a man who was arrested and detained for a crime of which he was innocent.

It is clear from the evidence that both appellants confederated and acted in concert in the commission of the crime. They are, therefore, equally criminally responsible for the offense of murder because of the qualifying circumstance of treachery. They are, however, jointly entitled to the mitigating circumstance of voluntary surrender. This fact is sufficiently established by the record but which the lower court failed to consider. The penalty imposed by the lower court should, therefore, be reduced from reclusion perpetua to an indeterminate penalty ranging from Eleven (11) years of prision mayor, as the minimum, to Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal, as the maximum.

WHEREFORE, with the foregoing modification, the appealed decision is, accordingly, affirmed in all other respects.

Makalintal, C.J., Fernando, Barredo, and Fernandez, JJ., concur.

Aquino, J., on sick leave.

[1] People v. Minda, L-4214, March 27, 1952.

[2] People v. Ansoyon, 75 Phil., 772, 777.

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