

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BIENVENIDO DOMINGUEZ, DEFENDANT-APPELLANT.

G.R. No. L-22474. November 26, 1970

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Accused Bienvenido Dominguez appeals from the Judgment of the Court of First Instance of Cavite, in its Criminal Case No. N-250, convicting him of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P6,000.00 and to pay the costs. The indictment against the said accused-appellant is a reconstitution of one formerly filed[1] that was burned or destroyed along with all court records and those in the fiscal's office when fire gutted the old Capitol building of Cavite City on 7 June 1959, after trial of the case had commenced.

It is not disputed that around midnight of 24 July 1956, at the enclosed ground floor of the house of Pedro Camerino in barrio Medicion, Imus, Cavite, while a group of persons were playing a game of mahjong or monte[2] at a table lighted by a 50-watt bulb with a conical lampshade, a person stepped inside, pointed a gun and fired several shots at close range at one of the players, Eduardo Lacson by name. In the ensuing scuffle, the gun-wielder disappeared. First-aid treatment was administered to Lacson, after which he was brought that same evening to the Philippine General Hospital in Manila where he was admitted at 12:55 A. M. in serious condition. He was treated therein for the following injuries:

"Gunshot wounds, multiple, through and through, face;

1. Entrance, left malar - passing through hard palate:

Exit, right cheek;

2. Entrance, right antero-lateral, neck;

Exit, left interscapular area (about 4th rib);

3. Entrance, right shoulder, posterior;

Exit, right shoulder, superior.

OPERATIVE DIAGNOSIS;

Fracture, transverse process, vertebra T[1], left;

Laceration, spinal cord, left, postero-lateral portion T[1];

Subarachnoid hemorrhage, marked.

X-RAY Examinations:

July 24, 1956:

Chest shows slight haziness of apical lung area which can be due to soft tissue super-imposed;

Rest of the lung field essentially clear;

Heart shows congestion of the left ventricular segment.

August 8, 1956:

There is tracheostomy tube in situ;

There are metallic clips in the region of the thoracic third.

OPERATION PERFORMED, July 26, 1956:

Laminectomy T[1] and T[2];

Removal bone fragments T[1].”

Lacson was discharged from the hospital on 16 September 1956, and, in the opinion of the attending physician, the injuries permanently disabled the patient. He was brought home to Imus, Cavite, where he remained paralyzed and bed-ridden until he died on 5 June 1957, due to heart failure caused by the paralysis produced by the injuries to his spine.

The trial court found the accused-appellant Bienvenido Dominguez as the person who intruded into the gambling den and shot Eduardo Lacson based on five (5) considerations, all of which are assailed as erroneous findings by said appellant in his assignment of errors. These considerations are as follows:

(1) the statement of the deceased in the hospital pointing to the accused as his assailant which statement may very well be considered as an 'ante-mortem' declaration, the same having been made by the declarant under consciousness of impending death; (2) the accused's silence when pointed to by the victim on that occasion; (3) the testimony of Pedro Camerino positively identifying the accused as the gunwielder; (4) the presence of gun powder residue in both his hands; and (5) the inherent weakness of his defense, which is 'alibi'." (Decision, Appellant's Brief, page 97)

The prosecution also showed that in Criminal Case No. 235 of the Justice of the Peace of Kawit, the deceased Lacson had been charged with physical injuries, for mauling and assaulting appellant Dominguez a few months before the shooting, but Lacson was acquitted (Exhibit "H").

In his appeal brief, accused-appellant lays considerable stress on the fact that while prosecution witness Pedro Camerino, in his testimony in chief, asserted that on the midnight in question, while he was at the ground floor of his house with about 15 persons, the deceased Eduardo Lacson among them, playing monte, the accused Bienvenido Dominguez entered, approached the gambling table and shot Lacson, who was seated just across the table; that Camerino told the people not to touch anything while he called for the police; that a policeman and PC Sgt. Desalla arrived and took down Lacson's declaration; then Lacson was brought to the Philippine General Hospital; and that while in the hospital, Lacson pointed to the accused (who was brought thither by some PC soldiers) as the person who shot him; yet in the course of his cross-examination, witness Camerino testified that he did not actually see Bienvenido Dominguez fire at Lacson; that he had previously testified that he saw Dominguez shoot Lacson because that was what other people told him and that he merely thought it was Dominguez because he knew him to be an enemy of Lacson.

Nevertheless, the trial judge discounted Camerino's about face because the retraction came only after a long recess, and his direct testimony tallied with his statement given to PC investigator Liberato Tamundong, shortly after the crime was committed, and later subscribed and sworn to before judge Joaquin Parcero[3], wherein Pedro

Camerino positively stated that he saw Bienvenido Dominguez fire at Lacson. We see no reversible error in this appreciation of the trial court, considering its opportunity to closely observe the witness, and the fact that Camerino's original identification of the appellant herein as the gunman is supported by other circumstances of record. Nor was the recognition made incredible by the concentration of the lamp's light on the gaming table, for the surface of the latter could reflect sufficient light into the room to render appellant's recognition by Camerino and the deceased entirely possible.

Thus, the assistant PC provincial commander at the time, Major Dawa, testified that at the Philippine General Hospital he brought accused-appellant close to the victim and inquired from the latter whether the accused was the one who did the shooting, and Lacson answered in the affirmative without the accused making any denial of the imputation. The paraffin cast of appellant's hands were found by Captain Crispin B. Garcia to be positive for gunpowder residues, and no reason is shown why these peace officers, Major Dawa and Captain Garcia, should falsely impute the crime to the appellant herein. Finally, appellant had a motive to commit the crime, since it was shown that the deceased Lacson had mauled the appellant herein a few months before the shooting, and for which Lacson was charged by the accused with the crime of physical injuries in the Justice of the Peace Court of Kawit, in Criminal Case No. 235 of that court. That Lacson was ultimately acquitted would in the normal course of events, all the more enhance appellant's animosity against the deceased.

To be sure, appellant denied that he was identified by the deceased at the hospital, and likewise contradicted harboring any grudge against the late Lacson. The trial court, however, refused to accord credence to his manifestly interested denials, as against those of the peace officers, and We see no reversible error in such estimate of the credibility of the opposing testimonies.

The accused-appellant also urges that the testimony of expert Garcia should be discounted, arguing that Garcia was not the one who made the paraffin casts. This pretense is, however, destroyed by appellant's own attempts to explain the powder traces appearing in the casts, by his uncorroborated explanation that he had been handling matches and lighting rockets (Kuitis) prior to the examination, which in itself is an implied admission that the paraffin casts examined by the chemist were those of appellant's hands.

We agree with herein appellant that the court below erred in holding the transcription of Lacson's declarations in the Hospital, written down by Major Dawa and thumbmarked by the victim (Exhibit "D"), to be admissible as a dying declaration. Not only was there a long interval (ten months and twelve days) between its execution on 24 July 1956 and declarant's death on 5 June 1957, but also the text of the declaration itself shows that the declarant himself was in doubt as to whether he would die or not. The main text of Exhibit "D" is as follows:

"Bienvenido Dominguez Body Guard of Elano Artemio We had a case. He was defeated. I don't know if I can make it I was shot at Medicion. I was playing madjong. Pedro Camerino saw him and Marcial Campana. I want him apprehended and imprisoned.

Q Is he the very person?

A Yes, sir.

Q Do you know his name?

A He is Bienvenido Dominguez.

Q How do you know him?

A He was near me."

Note that the expression "I don't know if I can make it", while evincing some doubt as to declarant's recovery,

fails to show that he believed him-self in extremis, "at the point of death when every hope of recovery is extinct", which is the sole basis for admitting this kind of declarations as an exception to the hearsay rule.[4] The unreliability of the alleged dying declaration is further emphasized by the statement therein that declarant was playing mahjong, when the evidence of both defense and prosecution is overwhelming that the game being played was monte, cards and not mahjong tiles having been found on the table by the PC investigator, Sergeant Tamundong. The error, however, in admitting this Exhibit "D" does not warrant a reversal of the conviction, there being on record other evidence, both direct and circumstantial, previously discussed, adequate to establish appellant's guilt beyond reasonable doubt.

Appellant's defense of alibi and the credibility of his witnesses is urged in the eighth assignment of error of his brief. The version is that the accused-appellant was, at the time of the shooting, in the house of his "ninong", Artemio Ilano; Ilano and his family had gone to see movies, leaving the accused to watch the house; when the Ilano family returned at eleven o'clock in the evening, the accused went to his room at the ground floor. Ilano read for sometime, then went up to sleep, telling accused Dominguez to do likewise. Moments later, Ilano heard the closing of the door downstairs and presumed that Dominguez had gone to bed. At about 2:00 o'clock in the morning, PC soldiers led by the then Provincial Commander arrived, and, after ex-plaining their purpose, brought Dominguez away.

Aside from the weakness of the defense of alibi, as repeatedly held by this Court, appellant's version of his whereabouts has wide-open leaks that discredit it. For Ilano's house was only about a kilometer away from the scene of the crime; and there is no certainty that when Ilano heard the closing of the door at the ground floor Dominguez was inside the room, for the sound of a closing door is consistent with the possibility that he had left the house thereafter to proceed to Camerino's house.

The same doubtfulness attends the testimonies of defense witnesses Ricardo Sañez and Eduardo Santos to the effect that they were present during the gambling game, had witnessed the shooting but did not recog-nize the shooter because of the darkness but that they were certain that it was not the accused. The court below aptly remarked on his point, "if they could not recognize the malefactor because of the darkness, how can they say also with certitude, that it was not the accused?"

In accordance with recent jurisprudence, starting with *People vs. Pantoja*, L-18793, 11 October 1968, 25 SCRA 468, the amount of indemnification to the heirs of the deceased should be increased to P12,000.00.

FOR THE FOREGOING REASONS, the appealed de-cision is hereby affirmed, with the sole modification that the indemnity to the heirs of Eduardo Lacson be in the amount of P12,000.00. Costs against accused-appellant.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur. Dizon and Makasiar, JJ., on official leave.

[1] Criminal Case No. 12382, according to appellant, see Appellant's Brief, page 7.

[2] As to which game was actually played the evidence is not uniform.

[3] Exhibit "A".

[4] *U. S. vs. Gil*, 13 Phil. 530; *People vs. Babiera*, 52 Phil. 97; *People vs. Alviar*, 56 Phil. 98, 100; 5 Moran, *Comments on the Rules of Court*, pages 2 81-2 82, fn. 12 to 15.

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