

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIVATE RUBEN LUNETA Y BAGA, ACCUSED-APPELLANT,

Ponente: TIJAM, J.

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TIJAM, J.:

This is an Appeal from the Decision,[2] dated July 13, 2012 of the Regional Trial Court (RTC) of Oriental Mindoro, Branch 40, in Criminal Case No. CR-08-9030 finding Accused-appellant and his co-accused guilty beyond reasonable doubt of the special complex crime of double homicide punishable under Article 249 of the Revised Penal Code.

On January 12, 2008, Accused-appellant Private Ruben Luneta and his co-accused Private Julius Tawacnig were charged and tried with the crime of double murder before the RTC, the accusatory information reads:

"That on or about the 9[th] day of January, 2008, at around 9:00 o'clock in the evening, in Barangay Sto. Niño, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, with intent to kill and without any justifiable motive, and with the use of high powered firearms, did then and there willfully, unlawfully and feloniously attack, shoot and spray bullets on STAFF SGT. BONIFACIO ARCEGA y RAYMUNDO and RAFFY IGNACIO y NAVARRO, who were then unaware, unarmed and defenseless, inflicting upon said victims mortal gunshot wounds, thereby causing their instantaneous death, to the damage and prejudice of their heirs.

In the commission of the offense, the qualifying circumstances of treachery and evident premeditation as well as the generic aggravating circumstance of disregard of the respect due the deceased Staff Sgt. Bonifacio Arcega as immediate superior of the accused are attendant."

During arraignment, the Accused-appellant and his co-accused pleaded not guilty to the crime charged. Thereafter, trial ensued.

Evidence of the Prosecution:

The testimonies of the prosecution witnesses, PO1 Eman Coronel (PO1 Coronel) and Dr. Ginalyn M. Caguete (Dr. Caguete) established the following facts:[3]

On January 9, 2008 at around 5:00 P.M., Accused-appellant Private Ruben Luneta (Pvt Luneta), co-accused Private Julius Tawacnig (Pvt Tawacnig) together with the victims Staff Sergeant Bonifacio Arcega (Sgt. Arcega) and Raffy Ignacio (Ignacio) visited PO1 Coronel in the latter's rented place at Small Tabinay, Puerto Galera, Oriental Mindoro. The group had a drinking spree in the said place and was able to consume 2 ½ bottles of Matador brandy. While drinking, Sgt. Arcega admonished Pvt Tawacnig for spitting in front of the group after he took his turn in drinking liquor. An altercation took place between the two, which continued despite being pacified by PO1 Coronel. Consequently, PO1 Coronel asked the group to end the drinking session. PO1 Coronel noticed that Pvt Tawacnig was very upset at Sgt Arcega. He saw Pvt Tawacnig gesturing a dagger look at Sgt Arcega and even uttered that he could kill a person.[4]

Thereafter, Sgt. Arcega, Ignacio, Pvt Tawacnig and Pvt Luneta proceeded to where they parked their motorcycles. When Pvt Luneta and Pvt Tawacnig had already boarded their motorcycle and rode in tandem, PO1. Coronel saw Pvt Tawacnig drew a .45 caliber gun at Sgt. Arcega who was then about to board the other motorcycle driven by Ignacio. PO1 Coronel took the gun and then handed it to Pvt Luneta. Pvt Luneta, however, returned the gun to Pvt Tawacnig, and told PO1 Coronel "wag kang mag-alala kayang kaya yan ng classmate ko." PO1 Coronel noticed that Pvt Luneta was also armed with a .45 caliber. Thereafter, Pvt Tawacnig and Pvt Luneta sped away towards the direction of the poblacion of Puerto Galera and the victims likewise left the place.[5] It was only at around 8:00 A.M. the following day that PO1 Coronel learned that the victims were shot and killed in Barangay Sto. Niño, Puerto Galera, Oriental Mindoro.[6]

Dr. Caguete[7] conducted the post-mortem examinations[8] of the victims. She found that Sgt Arcega sustained gunshot wounds in the middle of his chin on the left part of his chest near the heart and on his back. Sgt Arcega's death was probably due to multiple gunshot wounds. She also found that Ignacio sustained a gunshot wound on the right side of his neck and hematoma on his right eye. She opined that based on the wounds sustained, only one weapon was used in inflicting their wounds.[9]

The prosecution dispensed with the presentation of its witness, Pvt Antonio B. Sabusab (Pvt Sabusab), a member of the 4th Infantry Batallion, 2nd Infantry Division, Alpha Company assigned at Ponderosa, San Isidro Detachment, Puerto Galera, Oriental Mindoro, after the defense admitted the tenor of his supposed testimony based on his affidavit. In his affidavit,[10] he stated that, at around 9:51 P.M. on even date, during his tour of duty, he saw Pvt Tawacnig and Pvt Luneta arrived together with their motorcycle coming from town. He noticed that Sgt. Arcega, who was with the two in going to town, was not with them when they returned. Pvt Sabusab asked them about Sgt Arcega whereabouts but the two told him that Sgt. Arcega were instructed by them to go ahead as they still have to attend to their duties. He also saw Pvt Tawacnig walked back and forth from his hut and the two appeared drunk.[11]

The prosecution likewise dispensed with the presentation of Police Chief Inspector Daniel Lomboy, Forensic Firearms Examiner of the PNP Crime Laboratory in Camp Crame, who conducted the ballistic examination of the firearms allegedly used in the commission of the crime, after the defense admitted the tenor of his supposed testimony based on what was stated in the Firearms Identification Examination Report presented.[12]

Evidence of the Defense:

The defense presented the testimonies of Pvt Tawacnig and Pvt Luneta as follows:[13]

On January 9, 2008 at around 5:00 P.M., Pvt Tawacnig together with Pvt Luneta was at poblacion, Puerto Galera, Oriental Mindoro to buy fish at the river side. Unable to buy fish in the said area, they proceeded to a house near the highway and waited for a fish vendor. At around 6:00 P.M., their commanding officer Sgt. Arcega invited them to go to the poblacion of Puerto Galera. They walked for an hour. Upon reaching the place, Pvt Tawacnig and Pvt Luneta went to a store and drank softdrinks. Sgt Arcega proceeded to a house rented by PO1 Coronel and had a talk with the latter. Thereafter, Sgt Arcega called and invited them to a drinking session in the said house with other persons. The drinking session lasted at around 8:30 P.M. since Pvt Tawacnig had a duty to attend to at their headquarters. Sgt Arcega also reminded Pvt Tawacnig about his duty. The two left the place and went directly to their headquarters.

Upon arrival at the headquarters, Pvt Tawacnig changed his clothes and wore his military uniform and started his 9:00 to 10:00 P.M. duty. Pvt Tawacnig noticed that Sgt Arcega had not arrived yet even after his tour of duty and during the time he slept. When he woke up around 5:00 A.M. the following day, he was informed that Sgt Arcega was already dead. He learned that he was the suspect five days after the incident. They were required to undergo

paraffin tests and were found positive for the presence of nitrates in their hands. Pvt Tawacnig claimed that PCF Cawili required them to engage in firing activity before the said test.[14]

Pvt Luneta corroborated the testimony of Pvt Tawacnig. He testified further that there was no untoward incident that happen during their drinking session with Sgt Arcega. After the drinking session, he together with Pvt Tawacnig proceeded to their headquarter as the latter was on duty.

On July 13, 2012, the RTC rendered its decision convicting Pvt officers Tawacnig and Luneta beyond reasonable doubt of the special complex crime of double homicide, the dispositive portion of which reads:

"ACCORDINGLY, finding herein accused Pvt. Julius Tawacnig y Dayag and Pvt. Ruben Luneta y Baga guilty beyond reasonable doubt of the special complex crime of Double Homicide punishable under Article 249 of the Revised Penal Code and applying the Indeterminate Sentence Law, said accused are hereby sentenced to suffer the penalty of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY OF PRISION Mayor in its maximum period to TWENTY YEARS of Reclusion Temporal in its maximum period with all the accessory penalties as provided by law.

Both accused are hereby ordered to indemnify the heirs of the victim the amount of Seventy Five Thousand Pesos (P75,000.00) for each of the victims as civil indemnity and moral damages in the amount of Fifty Thousand Pesos (P50,000.00) for each of the victims conformably with existing jurisprudence. (People vs. Bajar, 414 SCRA 494).

Both accused shall be credited with the full time during which they have undergone preventive imprisonment provided that both accused agree voluntarily in writing to abide with the disciplinary rules imposed upon convicted prisoners otherwise, they shall be credited in the service of their sentence with only 4/5 of the time during which they have undergone preventive imprisonment.

SO ORDERED."

Pvt Luneta timely filed a notice of appeal with the RTC. However, Pvt Tawacnig did not appeal. Hence, the foregoing decision is already final and executory on his part.

On appeal, Pvt Luneta raised with this Court the following assignment of errors:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT PVT RUBEN B. LUNETA OF HOMICIDE BASED ON CIRCUMSTANTIAL EVIDENCE.

THE TRIAL COURT ERRED IN NOT CONSIDERING ACCUSED-APPELLANT PVT. RUBEN B. LUNETA DEFENSE OF DENIAL OR ALIBI."

Pvt Luneta argues that the circumstantial evidence relied upon by the RTC in arriving at its conclusion that Pvt officers Tawacnig and Luneta were the real perpetrators of the crime does not convincingly establish his specific participation in the said crime. He claims that the circumstances established by the prosecution concluded that only Pvt Tawacnig was the perpetrator of the crime, thus he prays for his acquittal.

After a careful review of the documentary evidence presented, We find no compelling reason to acquit Pvt Luneta on the ground that the prosecution had clearly established their guilt beyond reasonable doubt.

To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[15]

Considering that the victims can no longer testify against the perpetrators of the offense and the prosecution had

no eye witness to the crime, thus, a resort to circumstantial evidence is inevitable.

Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction when the concurrence of the following factors obtain: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances is such as would prove the crime beyond reasonable doubt. These circumstances and facts must be absolutely incompatible with any reasonable hypothesis propounding the innocence of the accused.[16]

We agree with the RTC that the prosecution had established the existence of an unbroken chain of circumstances that lead to no other logical conclusion but the guilt of Pvt officers Tawacnig and Luneta. We quote with approval the circumstantial evidence as found and correctly relied upon by the RTC leading to the inescapable conclusion that Pvt officers Tawacnig and Luneta were the real perpetrators of the crime; thus -

"In the instant case, the circumstances established clearly supported the finding of guilt of both accused Pvt. Julius Tawacnig and Pvt. Ruben Luneta. The following incidents, glaringly borne by the records and proven by the prosecution constitute an unbroken chain of evidence which lead to the conclusion that the accused committed the crime charged and nobody else could have done it except both accused herein: (1) that both accused arrived together riding in one motorcycle at the house being rented by prosecution witness PO1 Eman Coronel where they had a drinking spree with both victims and PO1 Coronel; that during said drinking spree, an altercation ensued between the victims (sic) Sgt Arcega y Raymundo and the accused Pvt. Julius Tawacnig y Dayag; (2) that accused Pvt Tawacnig was very very angry at the victim Sgt. Arcega because the latter admonished said accused Pvt. Tawacnig when the latter spat in front of persons who were present during the drinking spree; (3) that it was proven by the prosecution that after the drinking spree, while the victims and both accused were already leaving the place, PO1 Coronel accompanied them to the two motorcycles where both accused and the victims were supposed to ride on when Pvt. Tawacnig drew his caliber .45 pistol while the victim Sgt Arcega's back was turned on Pvt Tawacnig; (4) that the prosecution witness PO1 Coronel immediately took the caliber .45 pistol which the accused Pvt Tawacnig was about to fire at the back of Sgt Arcega and gave it to accused Pvt Luneta but the latter again returned it to accused Pvt Tawacnig saying, "Wag kang mag-alala. Kayang-kaya yan ng classmate ko"; (5) likewise as established by the prosecution, both accused Pvt Tawacnig and Pvt Luneta were armed with caliber .45 pistols during the drinking spree while the victim Sgt Arcega was at that time unarmed; (6) that even when both accused sped away riding in tandem on their motorcycles, prosecution witness PO1 Eman Coronel noticed that the accused Pvt Tawacnig was still very very angry at the victim Sgt Arcega; (7) from the tenor of the testimony given by the prosecution witness Pvt Antonio Sabusab that when both accused arrived riding in tandem on a motorcycle at the detachment in barangay San Isidro, Puerto Galera, Oriental Mindoro and he asked the two accused on why the victim Sgt Arcega was not with them, both accused replied that they were told by Sgt Arcega to go ahead of the latter at the detachment as both accused will attend their duties is clearly inconsistent with the testimonies given by the two accused that they were in hurry going to the detachment because accused Pvt Tawacnig will still be attending to his duty; (8) that prosecution witness Sabusab observed that accused Pvt Tawacnig was walking back and forth to the latter's hut and both accused appeared to have taken alcohol drinks when both accused arrived at their detachment. Lastly, and the most crucial for the prosecution is that the prosecution was able to prove that the ballistic examination of the firearms allegedly used in the commission of the crime charged, reveals that the microscopic examination and comparison of specimen marked "RGT" revealed the same individual characteristics with the caliber .45 test bullets fired from caliber .45 Armscor pistol with Serial Number 925961 marked "RGT 1A" and the microscopic examination and comparison of the specimen marked "RGT1" to "RGT4" revealed the same individual characteristics with one another and further examination and comparison of the specimen revealed the same individual characteristics with the caliber .45 cartridge cases fired from the caliber .45 Armscor pistol with Serial Number 925961 showing that the four (4) empty shells found at the crime scene were the empty shells of the bullets which were fired from the caliber .45 Armscor pistol owned and issued to accused Pvt Julius Tawacnig.

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Moreover, even assuming that they fired their respective firearms on 31 December 2007 yet, it is quite surprising on why the nitrates could still be found positive on their hands at the time that paraffin tests were taken on them which was already more than 10 days from the time that they allegedly fired their respective firearms. As averted to earlier, the empty shells of caliber .45 pistol found at the crime scene where both victims were shot and killed when submitted for ballistic examination together with the ballistic examination of the firearms owned and issued to Pvt Julius Tawacnig reveals that the bullets from said empty shells were fired from the said firearm. xxx" (emphasis supplied).

In the case of *People vs. Villaflores*,^[17] the Supreme Court ruled that the Rules of Court makes no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred; hence, no greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused. Nor has the quantity of circumstances sufficient to convict an accused been fixed as to be reduced into some definite standard to be followed in every instance. Taken together, the foregoing circumstances, creates a pattern leading to a conclusion that both Pvt officers Tawacnig and Luneta killed the victims.

"Under Article 8 of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. It must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties either by direct or circumstantial evidence of the conspirators' conduct before, during and after the commission of the felony to achieve a common design or purpose."^[18] Direct proof is not essential to show conspiracy. It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them.^[19]

Based on the circumstances established by the prosecution, there is no doubt that Pvt Luneta acted in concert with Pvt Tawacnig in killing the victims. It was established that Pvt Luneta was with Pvt Tawacnig during the time they left the place of PO1 Coronel and when they arrived at their detachment site. The span of time was the possible time the victims were killed. Also, both of them were positive of nitrates based on the paraffin tests conducted after the incident. Their allegation that they were required to undergo firing activities on December 31, 2007 was not substantiated by any convincing evidence.

We find that the RTC did not err in not giving weight to their defense of alibi and denial. Said defenses are inherently weak as in their case since there was no physical impossibility for them to be at the crime scene at the time the victims were killed. The crime scene is just within their reach as they have a motorcycle as a means of their transportation. Hence, We cannot discount the possibility that they were the authors of the crime. Furthermore, since there was no evidence on record showing that PO1 Coronel maliciously concocted a story in imputing the crime on them his testimony is credible.

We also agree with the RTC that the qualifying circumstances of treachery and evident premeditation and the generic aggravating circumstance of disrespect due to superior officer were not proven by the prosecution, thus, the RTC correctly found them guilty of the crime of homicide under Article 249 of the Revised Penal Code. However, We note in the dispositive portion of the RTC decision, the crime committed by Pvt officers Tawacnig and Luneta was denominated as "special complex crime of double homicide." We stress that there is no such thing as special complex crime of double homicide. Instead, the correct description of the crime committed by the said private officers is denominated as "two counts of homicide" under Article 249 of the Revised Penal Code.

Under Article 249 of the Revised Penal Code, the penalty imposed for the crime of homicide is reclusion temporal. Considering that no aggravating nor mitigating circumstances attended the commission of the crime, the

penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of reclusion temporal,[20] with the minimum penalty selected from the range of prision mayor.[22]

We find that the RTC incorrectly imposed the maximum period of the indeterminate penalty of 20 years of reclusion temporal, as the maximum penalty should be within the range of the medium period of reclusion temporal (14 years 4 months and 1 day to 17 years and 4 months). Thus, the correct penalty imposable should be imprisonment of 10 years and 1 day of prision mayor maximum as minimum period to 17 years and 4 months of reclusion temporal medium as maximum period.

The RTC erred in awarding P75,000.00 as civil indemnity to the heirs of the victims and the same must be reduced to P50,000.00 pursuant to prevailing jurisprudence.[23] Furthermore, in accordance with current policy, We impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid.[24]

WHEREFORE, the Appeal is Denied. The Decision, dated July 13, 2012 of the Regional Trial Court (RTC) of Oriental Mindoro, Branch 40, in Criminal Case No. CR-08-9030 is hereby AFFIRMED with Modification in that the Accused-appellant Pvt Ruben Luneta y Baga is guilty beyond reasonable doubt of two counts of Homicide and meted the indeterminate penalty of imprisonment of 10 years and 1 day of prision mayor maximum as minimum period to 17 years and 4 months of reclusion temporal medium as maximum period. The Accused-appellant is ordered to pay the heirs of the victims of 1) P50,000.00 as moral damages; 2) P50,000.00 as civil indemnity; and 3) impose the legal rate of 6% interest per annum on all monetary awards for damages, which shall commence from the date of finality of this decision until fully paid.

SO ORDERED.

Lopez, M.V., and Garcia-Fernandez, M.V., JJ., concur.

[1] Did not file a Notice of Appeal per Certification, dated September 25, 2012, Records, p. 247.

[2] Annex A, Rollo, pp. 38-53.

[3] See, TSNs, dated June 11, 2008, June 26, 2008 and July 28, 2008.

[4] See, Counter-statement of Facts of the OSG, Rollo, p. 64.

[5] See, RTC Decision p. 3, Rollo p. 40.

[6] See, Counter-statement of Facts of the OSG, Rollo, p. 65.

[7] Municipal Health Officer of Puerto Galera, Oriental Mindoro.

[8] Records, pp. 24-29.

[9] See, RTC Decision, p. 4, Rollo, p.41.

[10] See, Sinumpaang Salaysay, Records, p. 10.

[11] See, RTC Decision, p. 4, Rollo, p. 42.

[12] See, RTC Decision, p. 4, Rollo, p. 42 & Records, p. 78.

FINDINGS:

1. Microscopic examination and comparison of the specimen marked "RGT" revealed the same individual characteristics with the caliber .45 test bullets fired from the caliber .45 Armscor pistol with serial number 925961 marked "RGT-1A."

2. Microscopic examination and comparison of the specimens marked "RGT1" to "RGT-4" revealed the same characteristics with one another. Further examination and comparison of the above-mentioned specimens revealed the same individual characteristics with the caliber .45 test cartridge cases fire from the caliber .45 Armscor pistol with serial number 925961 marked "RGT-1A."

CONCLUSION: 1. The specimen marked "RGT" was fired from the caliber .45 Armscor pistol with serial number 925961 marked "RGT-1A."

2. The specimens marked "RGT 1" to "RGT-4" were fired from the caliber .45 Armscor pistol with serial number 925961 marked RGT-1A." xxx"

[13] See, TSNs, dated June 16, 2011 and March 26, 2012.

[14] See, Appellant's Brief, Rollo, p. 28.

[15] *Abella y Perpetua vs. People*, G.R. No. 198400, October 7, 2013.

[16] *People vs. Soriano*, G.R. No. 191271, March 13, 2013.

[17] G.R. No. 184926. April 11, 2012.

[18] *People vs. Alawig*, G.R. No. 187731. September 18, 2013.

[19] *Bacasmás vs. Sandiganbayan*, G.R. No. 189343. July 10, 2013.]

[20] From 14 years, 4 months and 1 day to 17 years and 4 months.

[21] From 6 years and 1 day to 12 years.

[22] *People vs. Canaveras*, G.R. No. 193839, November 27, 2013.

[23] *People vs. Canaveras*, G.R. No. 193839, November 27, 2013.

[24] *People vs. Galicia*, G.R. No. 191063, October 9, 2013.

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