

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLARO LAURETA, JR., ALIAS TITUS, DEFENDANT-APPELLANT.

G.R. No. L-31245. March 25, 1988

Ponente: YAP, J.

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YAP, J.:

Claro Laureta, Jr., alias "Titus", appealed from the decision of the then Court of First Instance of Misamis Oriental, finding him guilty of murder, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Aparicio Albuera, Jr. in the amount of P12,000.00, with no subsidiary imprisonment in case of insolvency and to pay the costs.

As found by the trial court, the facts of this case are as follows:

"In the evening of June 28, 1968, Dedicacion Albuera, wife of the victim, retired to her room as usual and went to bed. Her husband, Aparicio Albuera, Jr. was conversing with Ismael Javelona on the road. After a while, silence ensued. Moved by curiosity as to what was afoot, she stood up and peeped out of the door which was slightly opened to look for her husband. As she was standing at the door, she heard the droning sound of the motor of a jeep emerging from Rodriguez Street. It came to a halt and forthwith, she heard a voice from one in the jeep: "Jun-Jun". She turned her face to the left towards their poultry house where she saw her husband touching the gate of the poultry and as he was called, he turned and proceeded towards the jeep aiming the beam of the flashlight he was holding in his hands to the persons in the jeep. At this precise moment, she saw the accused Claro Laureta (known as Titus in the community of Gingoog) seated beside the driver with outstretched arm holding a firearm pointed at her husband. Three shots were fired in succession after which the vehicle rushed away passing through Sanchez Street or the National Highway. There were three other passengers in the jeep, but she recognized only the accused. Her first reaction was to reach the telephone to call the police, but she hesitated for a moment because she heard her husband calling: "Darl, Darl, help me because I was shot by Titus." Finally, she decided to call the police after which she went to her husband's side. She found her husband lying on his side on the three boards that served as a foot bridge. He said: "Darl, raise my head because I feel that my lungs have been hit." She made an attempt to raise his head but he was too heavy for her so she yelled for help. In a short while, she saw a car coming. She leaped on her foot to meet the car. Guillermo Ababon who was known to her was driving the car. She requested him to help but the two of them could not carry him and he suggested to call the police to which she replied that she already did. It did not take long, the help came. She saw Dario Ubalde, Steven Ubalde, Dodong Camocamo and others she cannot remember, who with some policemen arrived almost the same time, loaded Aparicio Albuera, Jr. in a jeep and took him to the Mission Clinic of Dr. Poblador. She changed her clothes and followed them to the Mission Clinic. When her husband reached the hospital, he was still with life. Dr. Poblador gave him an injection and placed the patient under oxygen. Then Guillermo Ababon asked him: "Jun, do you think you will die out of these wounds?" Albuera did not answer. Then it was followed by the following question: "Who shot you, Jun?" He answered: "Titus" - "What did you quarrel about?" There was no answer. Patrolman Marban took notes, Exh. C, (translation Exh. C-1) After the ante mortem declaration was accomplished, he expired at about 12:10 after midnight."

After trial, the lower court rendered a decision dated April 7, 1969, convicting the accused of murder primarily on the basis of the widow's testimony and the alleged ante-mortem statement purportedly executed by the deceased.

From the said decision, the accused appealed and assigned the following errors:

I

"THE TRIAL COURT ERRED IN FINDING THAT THE VICTIM'S WIDOW, DEDICACION ALBUERA WAS AN EYEWITNESS TO HER HUSBAND'S SHOOTING AND IN NOT FINDING THAT AT THE TIME OF THE SHOOTING, THE WIDOW WAS INSIDE THE HOUSE LYING IN BED.

II

THE TRIAL COURT ERRED IN FINDING THAT THE VICTIM'S ALLEGED ANTE-MORTEM STATEMENT (EXH. "C"), WAS EXECUTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAW AND IN NOT FINDING THAT IT WAS IMPOSSIBLE FOR THE VICTIM TO HAVE EXECUTED SAID STATEMENT PRIOR TO HIS DEATH.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING THE APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

IV

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE CRIME CHARGED WAS NOT ATTENDED BY ANY AGGRAVATING CIRCUMSTANCE AND IN NOT FINDING THAT APPELLANT VOLUNTARILY SURRENDERED HIMSELF UPON KNOWING THAT POLICE AUTHORITIES WERE LOOKING FOR HIM.

V

THE TRIAL COURT ERRED IN NOT ACQUITTING THE APPELLANT BY UPHOLDING HIS ALIBI."

In support of the first assignment of error, appellant claims that at the time of the crime, the widow was inside their house and could not have witnessed her husband's shooting; that the accused was never identified as the assailant by the victim or his widow on the night of the shooting; and that her account of the shooting was full of contradictions and inconsistencies. The issues posited in the first assignment of error boils down to one of credibility. We have repeatedly upheld the time-honored doctrine that the findings of fact of the trial court are entitled to great weight and respect and should not be disturbed on appeal unless it is shown that the findings are not supported by the evidence or the court failed to consider material facts and circumstances in its evaluation of the evidence, which is not the case here.

Under his second assignment of error, appellant assails the validity of the ante-mortem statement by the deceased, contending that it was physically impossible for the victim to have executed the same as he was not able to talk after he was shot. The evidence adduced by the prosecution belie this contention. Testimonies of witnesses Dedicacion Albuera, Cresdomer Camocamo and Dario Ubalde clearly show that the victim was still alive when brought to the Mission Clinic. It was there when, asked by Guillermo Abadon about the identity of his assailant, the victim mentioned "Titus".

The argument by the defense that there was no showing that the ante-mortem declaration by the victim was made under the consciousness of impending death is likewise without merit. For an ante-mortem statement to qualify as such, it is not necessary for the declarant to expressly state that he believes that death is inevitable. A declaration made by the deceased while suffering from serious wounds, as in this case, is admissible as dying declaration.[1] Seriousness of victim's wounds justify the conclusion that the declarant was conscious of his impending death.[2]

Under his third statement of error, appellant contends that vital prosecution witnesses who could have established what actually transpired were not presented. The established rule in this jurisdiction is that non-presentation by the prosecution of certain witnesses is not a sufficient defense. If the accused believes the testimonies of said witnesses are important to his cause, he should avail of them even by compulsory judicial process if necessary.[3] The non-presentation of other witnesses does not detract from the prosecution's evidence, the number of witnesses called to testify being left largely to the sound discretion of the prosecuting officers.[4]

Appellant decries that no effort was exerted to locate or produce the death weapon, nor any motive established for the alleged killing of the victim by the accused. Failure to submit the gun used in killing is not a fatal omission.[5] As for non-establishment of motive, while evidence of motive is useful, lack of its proof is not fatal to the prosecution's case.[6] Moreover, the absence of motive does not preclude the commission of the crime considering that nowadays it is of judicial knowledge that others have been killed or assaulted for lesser or no reason at all.[7]

On the fourth assignment of error, we agree with appellant that no aggravating circumstance attended the commission of the crime. The crime was committed with treachery, for although the attack was frontal, it was sudden and unexpected, thus, depriving the victim of any means to retaliate or defend himself.[8] With this finding, it necessarily follows that nocturnity cannot be appreciated as said aggravating circumstance is inherent in treachery.[9]

On the other hand, contrary to appellant's contention, the mitigating circumstance of voluntary surrender cannot be appreciated in his favor. Voluntary surrender does not simply mean non-flight. As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of an accused before his arrest, showing either acknowledgement of his guilt or an intention to save the authorities from trouble and expense that his search and capture would require.[10] Defense witness Emeterio Collado, PC Captain and Company Commander of the 421st PC Company stationed at Camp Alagar, Cagayan de Oro, testified that the appellant was only turned over to the Chief of Police when the warrant of arrest was served by an officer of the court upon the Office of the City Mayor. Clearly, there is no voluntary surrender since our jurisprudence is to the effect that voluntary surrender cannot be appreciated where petitioner gave himself up to the police upon receipt,[11] or only after the issuance of a warrant of arrest[12].

In his fifth assignment of error, appellant bewails the trial court's failure to uphold his alibi. He contended it was impossible for him to have been the gunman since at the time of the shooting, he was at home asleep. We have held that the distance of one (1) or two (2) kilometers from the scene of the crime does not exclude the possibility of the commission of the crime by the accused.[13] More so in this case where the crime scene is only about 500 meters away from the house where appellant was allegedly sleeping at the time of the crime.[14] Appellant's failure to prove that it was impossible for him to be at the scene of the shooting at the time of its execution is fatal to his defense.[15] Finally, alibi cannot prevail over the positive testimony and identification of the victim's widow.[16]

Considering the above discussion, we hold that appellant is guilty of murder without any modifying circumstance. In view of the abolition of the death penalty under the 1987 Constitution, the penalty which may be imposed for the crime of murder is reclusion temporal in its maximum period to reclusion perpetua. In this case, there being no mitigating nor aggravating circumstances, the penalty should be imposed in its medium period, which is eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. For the purpose of the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor, maximum, to reclusion temporal, medium, or from ten (10) years and one (1) day to seventeen (17) years and four (4) months (Article 61, par. 3, Revised Penal Code).

WHEREFORE, the decision of the court a quo convicting the appellant for murder is affirmed, with the modification that the appellant is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and the civil indemnity due the heirs of the victim is increased to P30,000.00.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

- [1] People vs. Sarabia, 127 SCRA 100.
- [2] People vs. Aquino, 133 SCRA 283.
- [3] People vs. Ombao, 103 SCRA 233.
- [4] People vs. Martinez, 127 SCRA 260.
- [5] People vs. Atanacio, 128 SCRA 22.
- [6] People vs. Pascual, Jr., 127 SCRA 179.
- [7] People vs. Basadre, 128 SCRA 641.
- [8] People vs. Mozar, 130 SCRA 568.
- [9] People vs. Pacada, 142 SCRA 427, 437.
- [10] People vs. Radomes, 141 SCRA 548.
- [11] Quial vs. CA, 126 SCRA 28.
- [12] People vs. Rodriguez, 19 SCRA 254.
- [13] People vs. Araja, 105 SCRA 133.
- [14] T.S.N., October 18, 1963, p. 87.
- [15] People vs. De Las Pinas, 141 SCRA 379.
- [16] Ibid; People vs. Valentino, 141 SCRA 397.

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