

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOROTEO CAMPANA Y PABULAYA, DEFENDANT-APPELLANT.

G.R. No. L-37325. August 30, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Circuit Criminal Court, Third Judicial District at Olongapo City, in Criminal Case No. CCC-III-0131-Zambales (788), convicting Doroteo Campana y Pabulaya of the crime of murder, and sentencing him to reclusion perpetua with the accessories of the law, to indemnify the heirs of the deceased, Mario S. Pantig in the sum of P12,000.00, and to pay the costs.

The information filed against the accused-appellant alleged:

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"That on or about the 12th day of September, 1971, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .22 revolver, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, repeatedly shoot with said caliber .22 revolver and wound one Mario S. Pantig, directing his shots on the chest, back and different parts of the body of the latter and as a result thereof, said Mario S. Pantig died instantly."

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The evidence for the prosecution is summarized by the trial court as follows:

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"x x x Briefly, the evidence tends to established that at about 3:00 o'clock early morning of September 12, 1971 the group of the deceased Mario Pantig, Remy Eclarino, Jose Mariano, Pelagio Gino and Norberto Botor walked to, and entered, the Maalikaya Nightclub along Rizal Avenue after a short repast at the Ines Restaurant, took a vacant table therein, ordered one bottle of beer each, and listened to the combo music between sips of beer.

"After some twenty minutes or so, the group prepared to leave. Mario was first to rise; he walked towards the door. His companions are to follow suit. Mario had just taken a few steps from their table when he was fired upon from his back. With the first shot, Mario turned around to face the accused, who by then fired again the second shot followed by several shots in succession. Mario fell. His companions were stunned; they could not move. Only Jose tried to assist their fallen companion. But the accused pointed his gun at Jose. Scared, Jose instead left, went outside, and looked for the police.

"At about this time, Patrolman Eduardo Labinpuno was riding in a jeepney that stalled in front of the Maalikaya Nightclub on account of traffic. Informed of the shooting in the club, he went inside, came upon Mario lying dead on the floor with gunshot wounds and directed that an ambulance and investigator be called. The tables inside were in disarray. He was told the gun-wielder was the accused standing nearby, whom he

thereupon placed under arrest. The accused did not resist or protest.

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"Before Patrolman Sobrepeña, who continued his investigation at the office, the accused admitted in a written declaration (Exhibit C) with having shot the deceased with his gun." (Decision, pp. 4-6, Rollo)

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The defense, on the other hand, admits that the gun which fired one of the shots belongs to the accused. The latter, however, denies having fired the same. The defense evidence is summarized as follows:

"In synthesis, he testified that he was a security guard of the Bataan Veterans Security Agency, Inc., assigned at the Maalikaya Nightclub with tour of duty from 6:00 o'clock in the afternoon of September 11, 1971 up to 6:00 o'clock in the following morning of September 12, 1971. Issued to him were the revolver, caliber .22, bearing serial number P-1010 (Exhibit D), and its corresponding authorization. (Exhibit 1, also Exhibit F). A certain Omanded was likewise a security guard that evening in the club but he was then under training.

"At 3:00 o'clock dawn of September 12, 1971, a brawl broke loose inside the club, occasioned by a fistic fight with breaking of glasses. Proceeding from the nearby cashier's booth where he was posted at the time in order to pacify the protagonists, he was grabbed from behind by someone and who took hold of his gun. They grappled together for its possession. Not long after the gun was wrested from him, five shots were fired in succession. His gun fired once only. The deceased fell on the floor. In the meanwhile, both Gerry Bustamante, brother of the club owner, and Tomas Santos, the floor manager, were by the counter.

"When Patrolman Labinpuno arrived he was shown the fallen man. The accused likewise pointed to him the gun on the floor beside the deceased, two and one-half feet away from the latter's hand. Soon after, Sobrepeña followed and Labinpuno handed him the gun. Upon the advice of the police, the accused changed into civilian clothes; thereafter, he was brought to the police headquarters.

"From Cell No. 3, where he was placed upon arrival at the city hall, Patrolman Sobrepeña took him out between 5:00 and 6:00 o'clock the same morning, brought him to the office, and there he was told to sign a three-page statement which he had not declared or read. (Exhibit C)." (Decision, pp. 8-9, Rollo).

A post-mortem examination of the victim's body was performed by Dr. Andrew Labrador, a resident physician at the Olongapo City General Hospital. The autopsy report states:

"(1) Fairly developed, fairly nourished, pale, generalized rigor mortis with post mortem lividity.

The man was shot at the posterior aspect of the distal third of the left forearm about 2½ inches above the wrist showing a rounded wound measuring 0.2 by 0.2 inch in diameters with a contusion collar. The bullet traversed the forearm in an AP direction in between the radius and ulnar bones and came out at the antero medial aspect of the forearm at the same level as the entrance.

"(2) Another bullet hit the man at the left side of the chest at the level of the 4th left intercostal space, 1-3/4 inch to the left of the midline penetrating the chest and hitting the left ventricle of the heart going through and through and lodging at the posterior thoracic wall causing hemopericardium amounting to about 40 cc. and hemothorax on the left side amounting to about 800 cc. contusion collar less prominent than the others.

"(3) Another bullet hit him at the left side of the upper back about an inch below the posterior axillary fold and lateral to the left scapular and traversing the muscles at the left side of the upper chest without penetrating the chest cavity and coming out at the anterior chest wall at the level of the left 4th intercostal space along the anterior axillary line.

"(4) Another bullet hit him at the lateral side of the left lower back at the level of the 9th intercostal space

along the posterior axillary line traversing the muscles at the lateral side of the left lower chest wall in an antero-posterior direction without penetrating the chest cavity and coming out anteriorly at the anterior chest wall at the level of the 10th rib along the anterior axillary line.

"(5) Another bullet penetrated the body at the mid-portion of the left posterior lumbar region traversing the abdominal cavity in an antero-medial direction hitting on its path the left kidney, the mesentery and a loop of the small intestine and coming out at the right anterior lumbar region causing hemorrhage from the left kidney and the mesenteric vessels amounting to about 500 cc.

CAUSE OF DEATH: Hemorrhagic Shock secondary to Gunshot wound of the heart and left kidney."

(Original Records, p, 195).

The dispositive portion of the decision finding the accused Doroteo Campana y Pabulaya guilty of murder reads:

"FOR ALL THE FOREGOING DISCUSSION, the Court finds and so holds the accused Doroteo Campana y Pabulaya GUILTY beyond reasonable doubt of the crime of murder, attended by the qualifying circumstance of evident premeditation, defined and penalized under Article 248, of the Revised Penal Code, and there being no mitigating or aggravating circumstance to offset one another, hereby sentences said accused to serve a prison term of reclusion perpetua, with the accessories of the law, to indemnify the heirs of the deceased, Mario Pantig, in the sum of TWELVE THOUSAND PESOS (P12,000.00), and to pay the costs." (Decision, pp. 15-16, Rollo)

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The accused-appellant raised two assignments of errors in his appeal, namely –

I

THE TRIAL COURT SERIOUSLY ERRED IN THE APPRECIATION OF THE EVIDENCE FOR THE PROSECUTION.

II

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE APPELLANT FOR THE CAPITAL OFFENSE OF MURDER.

In his consolidated discussion of the above assigned errors, the appellant uses the physical evidence and the alleged lack of motive to raise reasonable doubts about the crime of murder having been established.

The appellant points out:

1. The empty shells taken from the chambers of his pistol were found not to have been fired from that pistol after ballistic examination and analysis conducted by the National Bureau of Investigation (NBI).
2. The appellant is right handed. Yet, nitrates and powder burns were found on his left hand not on his right hand.
3. The gun holster marked as exhibit by the prosecution and admitted by the defense as the holster of the appellant's .22 caliber pistol is a holster for a right handed person. Yet, the nitrates and powder burns were on the appellant's left hand.
4. Remy Eclarino and Jose Mariano, companions of Mario Pantig, testified that the appellant shot the victim. This testimony is belied by the NBI finding that the five empty shells in the chambers of the gun were not fired from that gun.

5. The prosecution failed to prove any motive for the murder. There were customers who witnessed the shooting but the prosecution chose to use as witnesses only the companions of the victim.

A careful consideration of the records shows that the assigned errors have no merit.

Remy Eclarino was less than two meters way from Mario Pantig when the appellant shot the latter. Eclarino testified on their relative positions at the time of the shooting and described how appellant Campana, after the first shot which downed Pantig, approached the victim and fired four more times at him while the latter was twitching (*nagkikisay kisay*) in the convulsions of death and while lying on the floor.

Jose Mariano testified that their group was about to leave and Mario Pantig was the first to rise from his chair when the appellant shot Pantig. The witness was around three meters from the assailant. Pantig tried to turn around to face the gun wielder but he fell down. There were some more shots. Mariano could not recall the exact number but he said, "more than two" and the shots were successive. Mariano stated that he tried to help Pantig but Campana aimed the gun at him.

The two eyewitnesses positively identified the appellant as the killer. Their testimonies on the killing appear vivid and convincing. The evidence also indicates that the lighting system in the club at the time was sufficient for the two witnesses to recognize the gunman and to see all that was happening to the victim. It was then the breaktime of the combo furnishing the dance music. There was no loud music.

We agree with the People's counsel that from the narrations given by prosecution witnesses Remy, Eclarin and Jose Mariano and their respective observations of the shooting incident, there can hardly be any doubt that the appellant shot the deceased Mario Pantig, not accidentally, not during a struggle for the possession of the appellant's gun, but intentionally. In giving their written statements to the police, barely nine hours after the shooting in the case of Eclarino and a day after in the case of Mariano, both these witnesses readily identified the security guard, Campana, then detained in jail as the man who shot Pantig to death inside the Maalikaya Nightclub that early morning.

Clear and positive identification having been given by the eyewitnesses regarding the participation of the accused in the crime, his denial and explanations cannot overcome such evidence. (See *People v. Chavez*, 117 SCRA 221, 227)

Rogelio Munar, the National Bureau of Investigation (NBI) ballisticsian, testified that the slug or evidence bullet, which was found in the body of the deceased, was fired from the submitted Hi-standard Sentinel Revolver, Caliber .22, with Serial No. B-1010. The same bullet was also testified to by Dr. Labrador, who performed the autopsy on the deceased, as having caused the fatal wound because it penetrated the left ventricle of the heart and went through and through causing hemorrhage. Dr. Labrador's examination also disclosed no contusions on any part of the body of the deceased. He further concluded that the shots were fired at about four to six meters away because of the absence of powder burns on the victim's body. These findings belie the theory of the defense that there was a physical struggle between the accused and the deceased for the possession of the gun and in the course of such struggle, the gun exploded hitting the deceased.

The fact that nitrates or powder burns were found on the left hand of the accused when the holster of his gun was for a right-handed person was also explained. While the accused did not account for the presence of nitrates on his left hand, the NBI chief chemist, Jose K. Ubando, under whose supervision, chemist Leticia Manzo conducted her examination of the paraffin casts of the hands of the accused testified that there are several factors that influence the contamination of the hand that fires a gun. One of these is the possibility in this case that the appellant's left hand could have gripped or clasped his right hand while firing at the deceased in order to steady his aim. Although both Eclarino and Mariano were not definite as to how the appellant held his gun while firing, yet they

were certain that it was the accused who fired his gun successively at the deceased.

The defense attempted to discredit the two eyewitnesses by stating that their testimonies are biased considering that they were friends of the deceased and on the night of the killing, were the deceased's companions.

We find this argument untenable. The mere fact that the eyewitnesses were friends of the deceased does not, by itself, prove that they were prejudiced or biased in their testimonies, more so, if said testimonies were corroborated by medical findings. We have even upheld testimonies given by relatives notwithstanding their relationship to the deceased victims in a number of cases. (See *People v. Puesca*, 87 SCRA 130; *People v. Abujuela*, 92 SCRA 503; *People v. Ruiz*, 93 SCRA 739; and *People v. Ciria*, 106 SCRA 381) The rule is that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit. (*People v. Araja*, 105 SCRA 133, 145) In the case at bar, no evidence was adduced by the defense to indicate that the eyewitnesses were prompted by any ill-motive against the appellant. In fact, the witnesses both testified that prior to the shooting incident, they did not know the appellant. The appellant, in turn, also testified that he did not know the witnesses.

The fact that five empty shells found inside the chambers of the appellant's gun were ascertained after ballistic examinations not to have been fired by that pistol is not evidence to favor the appellant. The only explanation is that five bullets were fired elsewhere from another gun and the spent shells were inserted into the death weapon in order to mislead. It was not the appellant who turned over the gun to the police immediately after the shooting. The .22 caliber handgun was surrendered by the club's floor manager about half an hour after the incident when the police investigators started their work. What is definite is that the fatal bullet slug taken from the body of the deceased was established by the experts to have been fired from the appellant's gun.

Regarding motive for the shooting, the appellant himself in the statement given to the police declared that he was threatened by Mario Pantig who told him "Magingat ka, huling araw mo na ito" and later, he allegedly overheard Pantig tell his companions, "Mayroon akong yayariin ngayong gabi." The appellant claimed that he shot Pantig when he saw him reach into a pocket, thinking that Pantig would draw something. At any rate, under the circumstances of this case where eyewitnesses positively identified the appellant as the killer and described the manner the killing was committed, there is no need to establish a motive for the killing. (*People v. Araja*, 105 SCRA 133)

Neither can the appellant capitalize on the fact that there were customers inside the nightclub who, according to him, would have been less biased had they been brought to the witness stand. The choice of prosecution witnesses is for the fiscal to determine in the light of his evaluation of all pertinent circumstances. The mere fact that some witnesses were utilized and others were not, does not justify a conclusion that those who agreed to testify did not give credible testimony.

If the defense believed that the other customers in the nightclub could have given enlightenment on the case and proven the innocence of the accused, it could have availed of them, by compulsory processes of the court, to enable it to present them as its own witnesses. (*People v. Ombao*, 103 SCRA 233, 241) The defense, however, did not do so.

About one hour after the shooting incident, the appellant gave an extra-judicial statement to a police investigator wherein he owned the killing and gave as reason the alleged threats of Pantig to kill him. The appellant does not challenge in this appeal the lower court's use of the confession but we have examined it to ascertain compliance with Section 20 of Article IV, Bill of Rights, of the Constitution. We find from the records that the confession was taken on September 12, 1971. Under the *Manguerra v. Magtoto* (63 SCRA 4) decision, the strict requirements

calling for compliance with the right to counsel amendment do not retroact to confessions taken before the 1973 amendments. The former rules on admissibility of extra-judicial confessions apply to this case.

There is not the slightest indication of force, intimidation, or undue influence exerted to secure the confession. The details given in the confession could have been furnished only by the person giving it one hour after the shooting. The confession also tends to exculpate on grounds of self-defense. The confession therefore, does not vitiate in any way the validity of the decision appealed to us. As a matter of fact, the extra-judicial confession could be completely disregarded and the judgment of conviction could still be sustained by the evidence.

We find that treachery was present in the killing of Pantig. That there was treachery is shown in the testimonies of the eyewitnesses describing the victim as having been fired at once, at the back, then a second time as he was trying to face his assailant, then successively when he finally fell down. He was unarmed and totally unaware of the assailant's presence and of the fact that the latter was going to kill him. When an assault is suddenly made with a deadly weapon upon an unarmed and unexpected victim who has given no immediate provocation for the attack, and under conditions which make it impossible for him to evade the attack, flee, or make defense, the act is properly qualified as treachery; and the homicide resulting therefrom is murder. (People v. Pengzon, 44 Phil. 224)

We, however find, that the trial court erred in appreciating evident premeditation as a qualifying circumstance. The supposed plan deduced from Exhibit C is not supported by that document. The appellant indicated that he was prepared should Pantig make good the threat to kill him. This is not the equivalent of admitting a pre-conceived plan to shoot the unarmed victim in cold blood.

WHEREFORE, the decision appealed from is hereby AFFIRMED in all respects, without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

Teehankee, (Chairman), J., in the result.

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