

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO LORENZO ALIAS “BUNGI”; DEFENDANT-APPELLANT.*G.R. No. L-32295. September 12, 1984*

Ponente: CUEVAS, J.

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Assailed and challenged in this appeal, is the decision of the Circuit Criminal Court-Fourth Judicial District of Nueva Ecija, in Criminal Case No. CCC-IV-161-NE, convicting JUANITO LORENZO of MURDER and sentencing him to reclusion perpetua; to indemnify the heirs of the victim Benito Bote in the amount of P12,000.00 plus P1,000.00 for funeral expenses; and to pay costs.

Appellant's attack against the aforesaid judgment of conviction is anchored on the following errors allegedly committed by the trial court - (1) in finding him guilty of MURDER; (2) in appreciating the qualifying circumstances of treachery and evident premeditation against him; and (3) in imposing the penalty of reclusion perpetua.

At about five o'clock in the afternoon of April 9, 1969, the deceased Benito Bote was with his wife Segunda Bernardo, who was then carrying their two-year old girl, walking along the barrio road in Sitio Pantay, Rio Chico, General Tinio, Nueva Ecija. They were then bound for home coming from their place of work at the charcoal pond in the mountain nearby when all of a sudden accused-appellant Juanito Lorenzo sprang out of the bushes with a carbine.[1] Sensing that appellant was up at something wrong against her husband since he appeared angry, Segunda immediately embraced the appellant and tried to pacify the latter, thereby pleading to him - "Kung may galit ka sa asawa ko, pag-usapan natin ng mabuti".[2]

Meanwhile, the victim who was about eight meters ahead of his wife kept on walking unmindful and totally unaware of what was going on between his wife and the appellant.[3] Appellant, being stronger than Segunda, however succeeded in breaking loose from the latter's hold whereupon Segunda shouted at her husband who was then walking ahead of them - "Ayan na, babarilin ka." [4] Her husband did not seem to hear her. Right then and there, appellant belligerently accosted the deceased thereby addressing the latter - "You stop, magaling na lalaki" [5] and without further ado started firing at the defenseless victim.[6] The first shot fell the victim. But appellant continued firing mercilessly at the unarmed and helpless Benito Bote while the latter was down on the ground. Miguel Malgapo who happened to be walking along the same road, about twenty meters behind was attracted by the gun shots. He recognized the assailant to be the herein accused, JUANITO LORENZO.

Shortly thereafter, a brother of the accused arrived on a farm tractor[7] and the victim's body was loaded by Segunda with the help of the driver of the farm tractor on the said tractor and brought to the victim's house.

The shooting incident was immediately reported to the Police Department of General Tinio, Nueva Ecija. Upon receipt of the report, Sgt. Juanito Abesamis, together with two other policemen, immediately responded and went to the scene of the incident. On their way, they first passed by the victim's house where they viewed his lifeless body and found the same to be riddled with multiple bullet wounds. While in there, Sgt. Abesamis was informed

that the victim was shot by the accused Juanito Lorenzo.

From the victim's place, the group of Sgt. Abesamis then proceeded to the place of the shooting incident where they found blood spots along the road side[8] and two empty shells of carbine.[9]

Because of the information earlier conveyed to them that it was Juanito Lorenzo who shot the victim they then proceeded to the latter's house where they found him lying down inside a room. They questioned the accused about the gun he used in shooting the victim. The accused readily pointed to a room of their house. In there, Sgt. Abesamis found the gun[10] together with an empty magazine[11] exactly in the place indicated by the accused. While questioning the accused, Sgt. Abesamis noticed that the latter have a bullet wound on the left knee. Asked as to how he sustained said injury, the accused told Sgt. Abesamis that he was shot by the victim Benito Bote[12] and that after being hit, he also shot back at the victim.[13] On further verbal interrogation, accused admitted that it was he who shot Bote, the victim.[14]

Post mortem examination conducted by Dr. Lilia Mangulabnan, Municipal Health Officer of Gen. Tinio, on the victim's cadaver showed that the latter suffered eight (8) gunshot wounds. Wounds Nos. 2 and 4 according to this lady physician must have been inflicted while the victim was lying down with the assailant at a higher level.[15] Cause of death was due to shock, secondary to massive hemorrhage, secondary to multiple gunshot wounds on the victim's, ante-precardial region, left and right shoulder, right scapula region[16] thus producing instantaneous death.

I - Appellant's alibi against positive identification -

Appellant's defense consisted mainly of alibi and mere denial. He claimed that between 4:00 to 5:00 o'clock in the afternoon of April 9, 1969, he was in their house inside the Hacienda in Barrio Pantay, Gen. Tinio, Nueva Ecija.[17] Earlier that day, he operated a bulldozer up to about 5:00 o'clock in the afternoon. Thereafter he went home. Upon reaching their house and while about to enter his room, he was hit by the bullet fired accidentally from the .22 caliber rifle then being cleaned by his brother, Gavino Lorenzo, in another room. He denied having authored or participated in the shooting of the victim, Benito Bote. In fact, he did not know that victim Bote was shot and killed where it not for Sgt. Abesamis who informed him of the killing upon his arrest.

Appellant's aforesaid thesis of acquittal lacks persuasiveness sufficient enough to overthrow his conviction. It is uncontroverted that the killing of the victim took place before the very eyes of his wife, Segunda Bernardo, the deceased's companion on that fatal day. It was likewise witnessed by another barriomate of both the victim and the appellant, a certain Miguel Malgapo. Both these witnesses testified in a straightforward manner evincing belief in the veracity of their testimony. Coming from the same barrio, appellant is too well known to both Segunda and Miguel who have no reason whatsoever nor any evil motive to impute liability for the death of the victim on the appellant if not true. Arrayed against this cloudless and positive identification, appellant's alibi shatters into pieces.[18]

For alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. The accused must show that he was at some other place for such period of time as to preclude or render impossible his presence at the place where the crime was committed at the time of its commission.[19] Tested against this yardstick, appellant's alibi appeared inherently weak for appellant's house, as found by the trial court, was a mere 150 meters (although he insists it was about half a kilometer away)[20] from the scene of the crime. Furthermore, the shooting occurred at about five o'clock in the afternoon at a time when, according to the appellant, he had finished his work in the farm and was already on his way home.[21] In the light of these circumstances, there was nothing to prevent appellant from being at the place of the shooting incident at the time it happened.

Appellant's proffered injury hardly supports - his espoused cause. His dual version relative thereto destroys whatever probative value it rightfully deserves. First, he asserts upon being investigated by Sgt. Abesamis, that it was inflicted by the deceased[22] - - probably in an attempt to establish self-defense. This story was, however, totally abandoned when he took the witness stand during which time he declared that he was hit by the .22 caliber rifle which accidentally fired while being cleaned by his brother Gavino. The fact however that he suffered 2 gunshot wounds militates against his being a victim of accidental firing. On the contrary, it lends credence and validity to the trial court's observation that said injury was self inflicted for exculpatory purposes.

The futility of appellant's cause find added color from no less than appellant's counsel who made this stark and glaring admission -

"The undersigned counsel de officio must admit that, in conscience, he is fully convinced that appellant did really kill the victim. Hereunder appear the defenses presented by him before the trial court. It is sincerely and honestly believed that said defenses do not hold water, so to speak.

To exculpate himself, appellant could only offer a simple denial - he did not commit the offense. But there is the clear testimony of Segunda Bernardo positively identifying him as the assailant. The trial court, which had full opportunity to watch closely and observe the conduct and demeanor of the witness while she was testifying was fully convinced that she was telling the truth. And this appreciation appears to be correct."

II - Was the killing qualified by treachery and evident premeditation?

"There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [23]

For the qualifying circumstances of treachery to be present, two (2) conditions must concur: (1) the employment of a manner of execution which would insure the offender's safety from any defensive or retaliatory act by the offended party such that no opportunity is given the latter to defend himself or to retaliate; and (2) such means of execution was deliberately or consciously chosen.[24]

Appellant asserts that treachery was not present since the shooting of the victim was preceeded by a warning from the accused, and also by the fact that the former who was walking ahead, came face to face with the appellant before being shot.

Appellant's aforesaid submission is totally bereft of any factual or legal support. It is true, appellant shouted at the victim asking the latter to stop. But there is no showing that the victim heard the appellant. In fact, victim continued walking without at all being bothered or perturbed by anything. It was only when his wife, Segunda, shouted "Ayan na, babarilin ka", when the victim looked back only to be hit by the bullet fired by the appellant.[25] How could the victim have defended himself against such mode of attack and what possible retaliatory move can he make that will expose appellant to any danger against his life and limb? A cry or signal from the assailant does not make his attack less treacherous.[26] Similarly, when the firing was simultaneous and sudden, just immediately after the appellant had asked the victim and his companion who were then riding in a jeep that was then moving slowly after being flagged to stop, whether they were carrying firearms, there is treachery.[27] So also, the sudden and unexpected shooting of the victim with a carbine constitutes treachery.[28]

Evident premeditation however, which requires these three (3) elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect[29] do not appear proven by the prosecution's evidence. Although alleged in the information, the record is totally bereft of any

indication that it attended the killing of the victim. In fact, the trial court merely found accused-appellant guilty of murder without specifying the circumstance or circumstances qualifying the killing.

In convicting the accused-appellant, the trial court ordered him to indemnify the heirs of the victim in the amount of P12,000.00. That should now be increased to P30,000.00.

WHEREFORE, and except as thus modified, the judgment appealed from is AFFIRMED in all respects, with costs against accused-appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., and Guerrero, JJ., on leave.

[1] Pages 15, 16, TSN, December 16, 1969.

[2] Page 23, TSN, December 16, 1969.

[3] Page 19, TSN, December 16, 1969.

[4] Page 21, TSN, December 16, 1969.

[5] Page 21, TSN, December 16, 1969.

[6] Pages 16, 28, 29, 30, TSN, December 16, 1969.

[7] Page 35, TSN, December 16, 1969.

[8] Pages 44, 45, TSN, January 16, 1970.

[9] Exhibits "E", "E-1" and "E-2".

[10] Exhibit "B".

[11] Exhibit "E"; Pages 46, 48, TSN, January 16, 1970.

[12] Pages 48, 52, TSN, January 16, 1970.

[13] Pages 48, 49, TSN, January 16, 1970.

[14] Page 49, TSN, January 16, 1970.

[15] Page 4, TSN, December 16, 1970.

[16] Exhibit "A".

[17] Page 31, TSN, April 30, 1970.

[18] PP vs. Legares, 69 DCRA 210; PP vs. Saliling, 69 SCRA 427; PP vs. Berame, 72 SCRA 184; PP vs. han, 73 SCRA 484.

[19] PP vs. Lumantas, 28 SCRA 764; PP vs. Alcantara, 33 SCRA 812.

[20] Page 37, TSN, April 3, 1970.

[21] Page 31, TSN, January 5, 1970.

[22] Page 52, TSN, January 16, 1970.

[23] Article 14, Paragraph 16, Revised Penal Code.

[24] PP vs. Gamut, 118 SCRA 35; PP vs. Tomaob, 83 Phil. 742; PP vs. Saez, 1 SCRA 937.

[25] Pages 26-27, TSN, December 16, 1970.

[26] PP vs. Tatlonghari, L-22094, 27 SCRA 726, March 28, 1969.

[27] PP vs. Peralta, 39 SCRA 396.

[28] PP vs. Turalba, 55 SCRA 697; PP vs. Diaz, 55 SCRA 178; PP vs. Tingson, 47 SCRA 243.

[29] PP vs. Diva, 25 SCRA 468; PP vs. Regala, 113 SCRA 613.

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