

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUGENIO CRISOSTOMO, ACCUSED-APPELLANT.

G.R. No. L-32243. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

On Christmas day, December 25, 1967, between 6:00 and 7:00 o'clock in the evening at Sto. Rosario, Hagonoy, Bulacan, while Eugenio Crisostomo was passing near the house of Romeo Geronimo, he met the latter and invited him to have a drink in the place of a friend. Romeo declined the offer. Suddenly Eugenio rushed towards Romeo who was then standing near a store facing the street with his back towards Eugenio and shot him with a .22 caliber revolver at a distance of one (1) meter. The bullet entered about two (2) inches below the axilia (armpit) and came out on the right side of the chest about one (1) inch to the sternum. Romeo fell to the ground mortally wounded while Eugenio ran away. By-standers who were near the place such as Delfin Lopez, Ernesto Trillana, Apolonio Santos and Manuel Tamayo and others who were all friends of both the victim and assailant came to the aid of the fallen victim and brought him to the Reyes Hospital at the Poblacion of Hagonoy where the doctor pronounced the victim dead upon arrival. Thus, they brought the victim's body to his home.

An information for murder was filed by the provincial fiscal in the Court of First Instance (CFI) of Bulacan against Eugenio Crisostomo charging him of the crime of murder as follows:

"That on or about the 25th day of December, 1967, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Eugenio Crisostomo, armed with a firearm and with intent to kill one Romeo Felipe Geronimo, did then and there wilfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and shoot the said Romeo Felipe Geronimo with the firearms he was then provided hitting the latter on the chest, causing serious physical injuries thereon, which directly caused the death of the said Romeo Felipe Geronimo."

After the arraignment wherein accused entered a plea of not guilty and again during the trial, the accused signified his intention to withdraw his plea of not guilty to the charge of murder and to substitute it with a plea of guilty to a lesser charge of homicide and prayed that he be allowed to prove the mitigating circumstances. The same plea was made by the accused after the prosecution had rested its case but the fiscal did not agree. Thus the court denied the petition.

A decision was rendered on March 28, 1969 convicting the accused of the offense charged, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the court finds the accused EUGENIO CRISOSTOMO guilty beyond reasonable doubt of the crime of MURDER, punished under Art. 248 of the Revised Penal Code, without any modifying circumstance and hereby sentences him to Reclusion Perpetua, with the accessories of the law: to indemnify the heirs of the deceased in the sum of TWELVE THOUSAND PESOS (P12,000.00); and to pay the costs."

Not satisfied therewith the accused now interposed this appeal alleging that the trial court committed the following assigned errors:

"I

THE LOWER COURT ERRED IN FINDING THAT DEFENDANT-APPELLANT HAS ADMITTED HAVING KILLED ROMEO GERONIMO, INSTEAD OF LIMITING ITS FINDING TO THE TRUE EXTENT OF HIS ADMISSION.

II

THE LOWER COURT ERRED IN FINDING THAT THERE IS EVIDENCE BEYOND REASONABLE DOUBT THAT DEFENDANT-APPELLANT KILLED ROMEO GERONIMO, INSTEAD OF FINDING THAT NO EVIDENCE HAD BEEN PRESENTED AS TO THE ACTUAL CAUSE OF DEATH, THERE HAVING BEEN NO AUTOPSY PERFORMED ON THE BODY OF ROMEO GERONIMO.

III

THE LOWER COURT ERRED IN FINDING THAT DEFENDANT-APPELLANT HAD ACTED WITH TREACHERY.

IV

THE LOWER COURT ERRED IN NOT FINDING THAT DEFENDANT-APPELLANT IS ENTITLED TO THE MITIGATING CIRCUMSTANCE OF DRUNKENNESS.

V

THE LOWER COURT ERRED IN NOT APPRECIATING IN FAVOR OF APPELLANT THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

VI

THE LOWER COURT ERRED IN NOT APPRECIATING DEFENDANT-APPELLANT'S OFFER TO PLEAD GUILTY TO THE CHARGE OF HOMICIDE (THE TRUE CRIME COMMITTED IF ONE HAD IN FACT BEEN COMMITTED) AS A MITIGATING CIRCUMSTANCE.

VII

THE LOWER COURT ERRED IN NOT CREDITING DEFENDANT-APPELLANT WITH THE PRIVILEGED MITIGATING CIRCUMSTANCE OF PRESENCE OF TWO ORDINARY MITIGATING CIRCUMSTANCES WITHOUT THE PRESENCE OF ANY AGGRAVATING CIRCUMSTANCE."

Under the first assigned error appellant claims that the trial court erred in finding that he admitted having killed the victim.

Testifying in his defense the appellant claims that at the time of the incident when he saw the victim he played a joke on him by drawing his gun from his waist and pointing the same to the victim but the gun suddenly went off, its bullet hitting the victim. Taken by surprise he fled.

No doubt from the said version of the appellant he effectively, admitted having shot the victim Romeo Geronimo. In fact he fled from the scene of the crime upon realizing the gravity of what he had committed. It is clear that it was that single shot that felled the victim which was the immediate cause of his death.

Indeed, during the trial and as late as after the prosecution had rested its case, the appellant offered to withdraw his plea of not guilty and substitute it with a plea of guilty of the lesser offense of homicide but the prosecution refused to agree with his proposal.

Under the second assigned error the appellant claims that as no autopsy was performed on the body of the victim the prosecution has not established the actual cause of death of the victim. He contends that the death certificate of

victim (Exhibit A) to which he offered no objection is admissible only to establish the fact of death not the cause of the death of the victim. He further avers that the testimony of Dr. Juan Santos who examined the body of the victim but did not perform an autopsy shows that he did not qualify as an expert witness; and even if he were an expert witness there was no basis for him to render an opinion as to the cause of death of the victim. Further, appellant alleges that Dr. Santos mentioned two (2) wounds of different sizes but otherwise with exactly identical characteristics from which the possibility may be deduced that the victim may have been shot twice, the second time by a person other than the appellant.

These arguments are devoid of merit.

Dr. Santos, who was then the municipal health officer of Hagonoy, Bulacan, categorically testified that the cause of death of the deceased was a through and through gunshot wound which was caused by a bullet.[1] Although he may not be an expert witness, as a physician and health officer he is certainly qualified to give an opinion as to the cause of death of the victim. He externally examined the body of the deceased on the same night of the incident and found no other sign of external violence except the gunshot wound.[2] Under such circumstances, one need not be an expert to render an opinion that the said gunshot wound was the cause of death of the victim.

Contrary to the contention of the appellant, Dr. Santos pointed out the difference between the two (2) wounds on the body of the victim in that the left axilla wound was only 2.5 millimeters, while the right chest wound was 8 millimeters in diameter; that the former was round while the latter was oval; and that the former was deep while the latter was shallower. He denied that the wounds were of identical appearance.[3] Dr. Santos emphasized that the left axilla wound is the point of entry of the bullet while the right chest wound is its point of exit and that the said wounds were caused by one bullet. The trajectory of the bullet was from the left axilla to the right chest.[4] The speculation of the appellant that the victim may have been shot twice is thus totally without basis.

The death certificate and the notes issued by Dr. Santos after his external examination of the body of the victim establish the cause of death of the deceased contrary to the contention of the appellant.[5] In this jurisdiction such death certificate and notes issued by said municipal health officer in the regular performance of his duty are prima facie evidence of the cause of death of the victim.[6]

Moreover, the said death certificate is not only confirmed by the testimony of Dr. Santos and by two (2) eyewitnesses Manuel Tamayo and Delfin Lopez who stated that they saw the appellant rush at the victim and suddenly shoot him; that the victim fell down after he was hit; and that they brought him to the hospital but the doctor pronounced him dead on arrival. These two witnesses are mutual friends of both the deceased and the appellant so that their testimonies are free from any suspicion of bias or prejudice.

The appellant assails the findings of the court a quo that he acted with treachery in the commission of the offense as a third assigned error. He contends that while it may be true that he suddenly attacked the victim, it does not appear that he had consciously adopted the mode of attack intended to facilitate the perpetuation of the offense without risk to himself. In fact appellant claims that he was drunk and as such he could not have reflected on the special means of the execution of the act.

There is treachery when the offender commits any of the crimes against the person, employing means, method 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.[7]

The suddenness of the attack does not, of itself, suffice to support the findings of alevosia.[8] There must be evidence that the mode of attack was consciously adopted by the appellant to make it impossible or hard for the person attacked to defend himself or retaliate.[9]

In the present case, the appellant admitted that he had a previous altercation with the victim wherein he was hit by the deceased with a bottle because of certain differences they had in a billiard hall although he claimed to have resumed friendly relations with the victim thereafter.[10] Nevertheless, at the time of the incident, the appellant went through the motion of inviting the victim to join him in a drinking spree which the victim declined and then suddenly, without any ceremony, he shot the victim while his (the victim's) back was turned. The appellant used a gun, a lethal weapon to insure his design to kill the victim. He fired at him at a short distance aiming at a vital spot of his body. The victim was unarmed. From the environmental circumstances of the case, alevosia has been fully established.[11]

Under the fourth assigned error appellant alleges that he is entitled to the mitigating circumstance 'of drunkenness. He asserts that he had been drinking from one o'clock in the afternoon on that Christmas day and that he had been drunk five (5) times in his entire life so that it is not habitual.

Under Article 15 of the Revised Penal Code, intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony. Otherwise when habitual or intentional, it shall be considered as an aggravating circumstance.

The allegation of the appellant that he was drunk when he committed the offense is self-serving and uncorroborated. Besides, appellant admitted that at that time he was only dizzy,[12] and that he was on the way to another drinking spree. Obviously he had not drunk enough. He remembers the details of the shooting, the time it started and ended, how much wine he imbibed and the persons who were with him. He realized the gravity of the offense he committed so he fled and hid from the authorities. He sought sanctuary in the chapel of Sto. Rosario, boarded a tricycle going to the poblacion and took a La Mallorca bus to Manila. All these are acts of a man whose mental capacity has not been impaired.

As the fifth assigned error appellant argues that he should be credited with the mitigating circumstance of voluntary surrender stating that although he hid himself from the authorities for ten (10) days, he voluntarily surrendered to the authorities thereafter upon the advice of his parents.

The requisites of voluntary surrender are: (a) that the offender had not actually been arrested; (b) that the offender surrendered himself to a person in authority or the latter's agent and (c) that the surrender was voluntary.[13]

The testimony of the appellant is not disputed by the prosecution that while in hiding, upon the advice of his parents, he voluntarily surrendered on January 4, 1968, so he was detained in the municipal jail of Hagonoy.[14] The Court agrees that the appellant is entitled to this mitigating circumstance.

However, he cannot be credited with the mitigating circumstance of a plea of guilty to a lesser offense of the charge of homicide as invoked under the sixth assigned error. The requisites of the mitigating circumstance of voluntary plea of guilty are: (1) that the offender spontaneously confessed his guilt; (2) that the confession of guilt was made in open court, that is, before the competent court that is to try the case; and (3) that the confession of guilt was made prior to the presentation of evidence for the prosecution.[15]

In the present case the appellant offered to enter a plea of guilty to the lesser offense of homicide only after some evidence of the prosecution had been presented. He reiterated his offer after the prosecution rested its case. This is certainly not mitigating.[16]

In the light of the foregoing discussion, the seventh assigned error where the appellant claims that he should be entitled to the privileged mitigating circumstance is consequently without merit.

The offense committed is the crime of murder as the killing was qualified by treachery.[17] Considering that the commission of the offense is attended by the mitigating circumstance of voluntary surrender, applying the Indeterminate Sentence Law, the appellant is hereby imposed the indeterminate penalty of imprisonment of Ten (10) Years and One (1) Day of prison mayor as minimum, to Seventeen (17) Years, Four (4) Months, and One (1) Day of reclusion temporal as maximum. The indemnity for the death of the victim is increased to P30,000.00.

WHEREFORE, with the above modification as to the penalty and indemnity, the decision appealed from is AFFIRMED in all other respects, with costs against accused-appellant.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Griño-Aquino, JJ., concur.

[1] TSN, March 5, 1966, pp. 9-11.

[2] TSN, March 28, 1968, P. 47.

[3] TSN, March 5, 1969, P. 4.

[4] See Supra.

[5] Exhibits A and A-1.

[6] Section 38, Rule 130, Rules of Court; People vs. Liones, 117 SCRA 382; Wharton's Criminal Evidence, 12th Ed., Section 272 cited as footnote in People vs. Ancheta, 60 SCRA 333.

[7] Article 14, paragraph 16, Revised Penal Code.

[8] People vs. Arquiza, 55 SCRA 245.

[9] People vs. Tumaob, 83 Phil. 742; People vs. Saez, 1 SCRA 937.

[10] See Decision, p. 13, Rollo.

[11] People vs. de la Fuente, 126 SCRA 158; People vs. Crisanto, Jr. 135 SCRA 413; People vs. Cortega, 134 SCRA 526, 532; People vs. Escoltera, 139 SCRA 218; People vs. Pampang, 139 SCRA 393; People vs. Canete, 129 SCRA 452; People vs. Suipas, 29 SCRA 539; People vs. Morichom, 132 SCRA 116; People vs. Moral, 132 SCRA 474; People vs. Pasea, Jr., 137 SCRA 508; People vs. Villanueva, 130 SCRA 75.

[12] TSN, March 7, 1969, p. 8.

[13] People vs. Hanasan, 29 SCRA 534.

[14] TSN, March 7, 1969, pp. 6-8.

[15] People vs. de la Pena 66 Phil 451; People vs. Oandasan, 25 SCRA 277; People vs. Co Chang 60 Phil. 293; People vs. De Guzman 63 Phil. 874; People vs. Lambino 103 Phil. 504.

[16] Supra.

[17] Article 248, Revised Penal Code.

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