

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHILIP VALDEMORO, DEFENDANT-APPELLANT.

G.R. No. L-51367. January 22, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Philip Valdemoro, the accused herein, elevated to the Court of Appeals the judgment of the Circuit Criminal Court, 10th Judicial District, Masbate, Masbate, dated April 6, 1973, convicting him of Murder, qualified by treachery, and sentencing him

"x x x to suffer imprisonment of from TEN (10) YEARS and ONE (1) DAY of prison mayor as minimum, to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as maximum; to indemnify the heirs of the deceased Josefino Rejuso in the amount of P15,000; and to pay the costs.

"The accused Federico Vargas and Rolando Cos are hereby acquitted."

The Court of Appeals, in its Decision promulgated on July 30, 1979, in CA-G.R. No. 16159-CR, affirmed the conviction, modified the penalty to reclusion perpetua, but did not enter judgment. The case is now before us for review.

Developments before the trial of the case below are pertinent. The Information, dated July 26, 1972, filed before the Court of First Instance of Masbate, Branch III, charged Philip Valdemoro (the appellant, for short) together with Federico Vargas, Rolando Cos, John Doe and Richard Doe with the crime of Murder for having shot "with a pistol one Josefino Rejuso, thereby inflicting upon him gunshot wounds on his body, which injury directly caused his death."

On August 11, 1972, upon joint motion of the prosecution and the defense, for the reason that appellant was a son of one of the Assistant Provincial Fiscals of Masbate, the Court of First Instance transferred the case to the Circuit Criminal Court, 10th Judicial District (Judge Ricardo Payumo, presiding). An identical Information for Murder was filed with the latter Court against the same accused, docketed as Criminal Case No. CCC-X-183.

Upon arraignment on September 22, 1972, appellant and his co-accused pleaded not guilty.[1] Trial of the case was scheduled to begin also on said date. However, upon a defense motion, since a request for reinvestigation had been filed with the Office of the Provincial Fiscal on the ground of newly discovered evidence, trial was re-scheduled.

During the reinvestigation, the newly discovered evidence presented by the defense was the written confession and oral admission of one Ricardo Arcueno to having killed the victim, which evidence was corroborated by Marianito Alba and Oscar Rejuso.[2]

On October 26, 1972, District State Prosecutor Zosimo Angeles entered his appearance for the prosecution when Assistant Fiscal Raul Arnau inhibited himself from further handling the case considering that a son of his co-worker was involved.[3]

On November 9, 1972, an Amended Information for Murder was filed with the Circuit Criminal Court reciting the same allegations as the original, but, this time, with Ricardo Arcueno included as an accused.[4]

On the same date, Ricardo Arcueno, 16 years old, a Grade VI student, was arraigned and pleaded guilty. However, it appearing from interrogations made by the trial Court that Arcueno did not fully understand the import of the aggravating circumstances of treachery and evident premeditation averred in the Information, his plea of guilty was considered withdrawn and a plea of not guilty was entered for him.[5] His counsel's offer to make him plead guilty to the lesser offense of Homicide was apparently rejected by the trial Court.

Trial commenced on November 8, 1972 with the presentation by the prosecution of Reynaldo Khiong as its first witness.

On November 10, 1972, the prosecution moved to dismiss the charge as against Arcueno on the following grounds: 1) based on the evidence already adduced by the prosecution, it appeared that no competent evidence existed linking Arcueno to the commission of the crime charged as he was not even identified as one of the culprits by the first prosecution witness who had already testified; 2) the prosecution believed that it could not secure the successful conviction beyond reasonable doubt of accused Arcueno as none of the remaining prosecution witnesses could identify Arcueno; and 3) the continued inclusion of said accused in the Information may subject him to further inconvenience and unnecessarily expose him to the rigors and anxiety of a public trial.[6] Dismissal was vehemently objected to by the defense on the ground that it would amount to a suppression of vital evidence and constitute a serious miscarriage of justice greatly affecting appellant's rights and interests.[7]

On November 14, 1972, the trial Court dismissed the charge as against Arcueno holding that the ultimate appreciation of the evidence in his possession rests with the Prosecuting Fiscal whose discretion in the matter should be respected unless clearly shown to have been exercised in bad faith and abuse of authority.[8]

At the resumption of the trial, Reynaldo Khiong continued his testimony, followed by Nylon Espenilla and Juanito Pastrana. All three were at the scene of the crime and they narrated the occurrence as follows: on May 27, 1972, at around 7:00 in the morning, the victim Josefino Rejuso, a 19-year old student, studying in Manila, and his friend Nylon Espenilla, 17 years old, arrived in Masbate, Masbate, from San Jacinto in Ticao Island. Both were bound for Manila and were waiting for the boat Agustina to arrive.

At around 2:30 in the afternoon of the same day, the victim, Nylon Espenilla and Reynaldo Khiong, 15 years old, a high school student, and a first cousin of the victim, were at the Masbate Social Center grounds and were seated under a star apple tree fronting the Office of the Provincial Engineer. Shortly thereafter, five persons approached them. Khiong identified three of them as the appellant, Federico Vargas and Rolando Cos. Khiong knew the other two only by face.[9] Appellant then asked the victim why the latter had boxed him the previous night, to which query the victim did not answer. Two companions of the appellant then asked the victim the same question. This time, the victim stood up, stepped backwards and said he could not have possibly boxed appellant the previous night as he had just arrived in Masbate that morning and was bound for Manila. Suddenly, appellant, at a distance of about ten armlengths[10] from the victim shot the latter with a pistol initially hitting him on the left arm. The bullet then penetrated the left side of his body and caused the victim to slump to the ground. At this juncture, Espenilla and Khiong stood up to assist the victim but appellant pointed his pistol at them and said in the dialect "camo pa" (you also). After the shooting, appellant and his companions ran away taking separate ways. Khiong and Espenilla carried the victim to the Provincial Hospital where he was attended to by Dr. Levi Osea. The victim

died a few hours later.[11]

Juanito Pastrana, another prosecution witness, testified that after having heard a gunshot, he saw the appellant, Federico Vargas, Rolando Cos and two other companions running away from the Masbate Social Center.[12]

The first witness presented by the defense was PC Sgt. Ruben Zaragoza who testified that, in the morning of August 8, 1972, one Marianito Alba went to the PC headquarters to volunteer information regarding the death of the victim, and he pinpointed Ricardo Arcueno as the one who shot the victim; that, acting on said disclosure, Ricardo Arcueno was picked up and his statement taken by Sgt. Zaragoza, after which, Arcueno subscribed to the same before Assistant Fiscal Arnau.[13]

The self-confessed killer's (Ricardo Arcueno's) version of the incident, follows: on May 27, 1972, at about 2:30 in the afternoon, Arcueno was at the grounds of the Masbate Social Center, alone. He was near a star apple tree waiting for the basketball game to begin. The victim, Josefino Rejuso, called his attention and said "pare ko", may I light my cigarette?" Arcueno obliged by extending his cigarette to the victim. Then, the victim told him, "pare, sikat ka," to which comment replied, "no." Suddenly, the victim dealt a "karate" blow on Arcueno's stomach causing the latter to fall to the ground.[14] When Arcueno was about to stand up, he saw the victim pull his Batangas knife; whereupon, Arcueno pulled and fired his gun hitting the victim on the left forearm with the bullet penetrating the stomach. The victim fell. Arcueno then saw people running for safety and he, too, ran until he reached his house at Lomboy, Masbate, Masbate. Later, he took a truck bound for Cataingan where he took the boat "San Vicente" for Agnayan. From Agnayan, he proceeded to Cebu where he stayed in the pier area for one month. He sold the gun he used in killing the victim, a "super .38", in Cebu for P400.00 when he ran out of money. After his stay in Cebu, he went back to his parents' farm at Palanas, Masbate, staying there for three months. On August 8, 1972, he returned to Masbate, Masbate. The following day, two PC soldiers picked him up and took him to the PC Headquarters where he was investigated on the basis of Marianito Alba's statement, taken on August 8, 1972, pointing to him (Arcueno) as the person who had shot the victim.[15]

Arcueno's testimony was corroborated by Marianito Alba, 22 years old, jobless; and by Oscar Rejuso, 21 years old, student, and appellant's first cousin.

Alba declared that he was also at the Masbate Social Center, strolling, when the incident occurred. From a distance of 15 meters, he saw the victim stand up from where he was seated and approach Arcueno as if to ask for a light. When Arcueno extended his cigarette, the victim gave a "karate" blow to Arcueno on the abdomen, and the latter fell down. Then, the victim pulled out his Batangas knife and, upon seeing this, Arcueno drew his gun and shot the victim. Alba further detailed that he knew the victim on February 19, 1972 when the latter was demonstrating "karate" at the pier. Alba also admitted that when the incident happened he knew Arcueno only by face and came to know his name and address only on August 8, 1972 when Arcueno bought rice from the store of the witness' brother.[16] With that information, Alba reported what he knew of the incident to the PC headquarters where his statement was taken by Sgt. Ruben Zaragoza.

Oscar Rejuso declared that he arrived in Masbate, Masbate, at 9:00 A.M. of May 27, 1972 and stayed in appellant's house. At 2:00 P.M. of that day, he and Joel Ramirez asked appellant to go with them to the basketball court near the Masbate Social Center. Since there were no teams practicing, they conversed under an acacia tree. Oscar then saw a bigger person coming from a star apple tree and approach a smaller person. The bigger person gave a blow to the smaller person who fell down. While the latter was on the ground, it was as if he pulled a gun. Upon hearing a gunshot, he and his companions, who were about 30 to 35 meters from where the two persons were, took to their heels.[17]

An additional defense witness was Romeo Rejuso, 49 years old, father of defense witness Oscar Rejuso, and an

uncle of the victim. Romeo Rejuso testified that he met prosecution witnesses, Reynaldo Khiong and Nylon Espenilla, at the house of his own uncle, Eugenio Rejuso, a day after the burial of the victim. While there, he asked Khiong about the incident. Khiong told him that while sitting under the star apple tree at the Masbate Social Center, the victim stood up and went behind him and Nylon Espenilla. After a while there was a shot behind them and when they looked, they saw the victim fall down. Then, they saw a person, whom they could not identify, running towards Plaridel Street. Nylon Espenilla allegedly told Romeo Rejuso that he and Reynaldo Khiong had admitted to Dr. Levi Osea, the doctor who attended the victim, that they did not know, whether by name or by face, the person who had shot the victim.[18] Nylon Espenilla, on rebuttal denied that he told Romeo Rejuso that he did not know who shot the victim, and revealed that Romeo Rejuso even offered him P500.00 and a piece of land if he would go away and desist from being a witness.[19] This was denied on sur-rebuttal by Romeo Rejuso.[20]

Dr. Levi Osea (one of the prosecution witnesses), under cross examination by counsel for the defense, identified an undated History Record[21] prepared by him where the entry in the name of the assailant appears as "unknown". Said physician also testified that when he asked witnesses, Khiong and Espenilla, in the hospital for the identity of the assailant, they professed ignorance.[22]

Taking the witness stand, appellant, a student, 19 years old, single, denied knowing the victim and having confronted the latter. He declared that on May 27, 1972, at around 2:30 in the afternoon, he was at the Masbate Social Center in the company of his first cousin, Oscar Rejuso, and one Joel Ramirez. Since there were no basketball players practicing, they sat under an acacia tree. Suddenly, they heard a gunshot after which people, including themselves, ran and scampered for safety.[23] It was only much later while they were watching a pingpong game at the house of Atty. Pacis that he heard people talking about the shooting at the social center and that a certain Rejuso was shot.

On April 6, 1973, the trial Court, as earlier stated, rendered judgment convicting appellant but acquitting co-accused Federico Vargas and Rolando Cos. On appeal to the Court of Appeals, appellant alleged:

"I. The lower court erred in dismissing the case against accused-appellant Ricardo Arcueno, inspite of his admission in open court that he was the one who shot the deceased, before the termination of the hearing and therefore acted in a manner which prejudiced the right of accused-appellant Philip Valdemoro to due process of law;

II. The lower court erred in disregarding the express admission of the accused Ricardo Arcueno that he was the one who shot the victim Josefino Rejuso;

III. The lower court erred in not giving weight to the testimony of Dr. Levi Osea, that the witnesses for the prosecution Reynaldo Khiong and Nylon Espenilla did not know who shot the victim Josefina Rejuso when they brought him to the hospital immediately after the incident;

IV. The lower court erred in giving reliance to the testimonies of prosecution witnesses Reynaldo Khiong and Nylon Espenilla despite the circumstance of the case;

V. The lower court erred in not giving credence to the evidence of accused-appellant Philip Valdemoro;

VI. The lower court erred in convicting accused-appellant Philip Valdemoro of the crime charged in the information."

The Court of Appeals affirmed the lower Court Decision on July 30, 1979, except for the penalty, which was increased to reclusion perpetua.

Upon the facts and the evidence, we affirm the judgment under review.

1. There was, indeed, no error in the dismissal of the charge against Ricardo Arcueno whom the Fiscal found as a false confessed killer, nor was appellant denied due process by reason of the dismissal. It is basic that all criminal actions are prosecuted under the direction and control of the Fiscal (section 4, Rule 110, Rules of Court) against, all persons who appear to be responsible therefor (section 1, *ibid.*). As manifested in his Motion to Dismiss, the Fiscal was without competent evidence, other than his false confession, linking Arcueno to the commission of the crime and was of opinion that he could not secure Arcueno's successful conviction beyond reasonable doubt. The Fiscal was well within his prerogative, therefore, in moving for dismissal, duty-bound as he was to ensure a searching and intelligent prosecution.

"Under the prevailing criminal procedure, the fiscal's sphere of action is quite extensive, for he has very direct and active intervention in the trial, assuming as the Government's representative the defense of society, which has been disturbed by the crime, and taking public action as though he were the injured party, for the purpose of securing the offender's punishment, whenever the crime has been proved and the guilt of the accused as the undoubted perpetrator thereof established.

"Perfunctory routine action is not sufficient performance of this duty, but a searching and intelligent prosecution is necessary. There should be an effort to submit at the trial the best and strongest evidence available, wherefrom must necessarily appear either the guilt or the complete innocence of the accused." [24]

That appellant was denied due process stemming from the dismissal is evidently untenable. He was accorded a fair and impartial trial and had all the opportunity to present evidence in his defense. Despite the fact that the charge against Ricardo Arcueno was dismissed, he testified as a defense witness with full opportunity to give his version of the incident for objective evaluation by the trial Court. Arcueno's confession, and admission in open Court, however, was found unworthy of credence, and rightly so. He was never identified by eyewitnesses to the incident, whether immediately thereafter or during the trial. He emerged claiming to be the culprit only two months and eleven days later under dubious circumstances. And, as far as his story goes, it was most unnatural that the victim would deal him a "karate" blow on the stomach without reason; that he would have to go into hiding when his theory was self-defense; that a boy of 16 would be in possession of a pistol, and that he would return to the scene of the crime two months later, disclose his name and address to a stranger, Marianito Alba, and risk apprehension. Thus, the appellate Court had reason to stress:

"But Arcueno did what was out of the ordinary. He went back to the town where he allegedly committed the crime, exposed himself in the business section, gave his name to the first stranger who asked for it, and even informed the stranger where he was staying, waited for the authorities to pick him up, and when he was picked up and brought by the P.C. soldier to the PC headquarters, he immediately confessed that he killed Josefino

Rejuso but in self-defense. Why did he not surrender himself to the authorities right after the shooting if he really killed Josefino Rejuso in self-defense? And self-defense is either a justifying or mitigating circumstance. To be noted is the age of Arcueno when he allegedly committed this crime. He was 16 years old. He could also invoke sufficient provocation on the part of the deceased. The minority of Arcueno, plus two or more mitigating circumstances will bring down the penalty to one degree lower. His defense counsel offered to make him plead guilty to homicide. If that was accepted by the prosecution, his conviction will automatically clear Valdemoro. The impossible penalty for homicide is reclusion temporal. With a privileged and other mitigating circumstances that could be invoked in favor of Arcueno, the impossible penalty will be prision mayor. And applying the indeterminate sentence law, the penalty could still be brought much lower, from the minimum of prision correccional to the maximum of the minimum of prision mayor. Is Ricardo Arcueno therefore but a "fall guy" in this crime?[25]

A confession, to serve as a basis for acquittal of another must inspire credibility. It must not be improbable nor excite disbelief. It must be one which the normal experience of mankind can accept as within the realm of probability.[26] Arcueno's confession falls far short of these exacting criteria.

2. The due credence given the testimonies of prosecution eyewitnesses by both the trial Court and the appellate Court as against those of defense witnesses is likewise in order. In assailing the credibility of Reynaldo Khiong, appellant points out that Khiong contradicted himself when initially he denied that Dr. Osea, while attending to the victim, inquired about the identity of the assailant but later admitted that Dr. Osea did ask that question. We cannot consider this contradiction sufficient to overthrow Khiong's credibility. His testimony-in-chief was corroborated by another eyewitness and companion of the victim, Nylon Espenilla. Besides, even assuming that Khiong had denied knowledge of the culprit, we have held that the initial reluctance of witnesses to volunteer information about a criminal case and their hesitancy to be involved in or dragged into a criminal investigation is common and has been judicially declared not to affect credibility.[27] Additionally, Dr. Levi Osea's testimony to the effect that when he asked Espenilla and Khiong regarding the identity of the victim's assailant, they allegedly answered that they did not know, is open to serious doubt. A physician's immediate concern is the saving of human life. An inquiry as to the authorship of an offense is not his main concern and is more properly left to investigative authorities. Furthermore, as the trial Court observed, no subpoena duces tecum was issued by it for the production of the undated "History Record" of the victim wherein appears the entry that the assailant is "unknown", and yet said document was "handily" produced by the witness during cross-examination.

Khiong and Espenilla could not but have known the identity of the assailant. They were with the victim at the time of the occurrence; they gave their statements to the PC investigators shortly after the incident, on the same day, naming the principal protagonists and even relating the conversation that had transpired; they were familiar with appellant and knew two of his companions by name and the others by face; they were unwavering in their identification of appellant both during the investigation and during trial. In the absence of any showing as to improper motives the testimonies of Khiong and Espenilla are worthy of full faith and credit.[28]

In contrast, the plausibility of the testimonies of defense witness, Marianito Alba, and of Ricardo Arcueno, as explained above, is open to serious doubt. As observed by the Court of Appeals:

"Alba said he saw Josefino Rejuso stand up from where he was under the star apple tree with Khiong and Espenilla and approached Arcueno who was 3 meters from the said tree in order to light his cigarette. From a distance of 15 meters, how could Alba say that the intention of Josefino Rejuso in allegedly approaching Arcueno was to light his cigarette?

"Alba said that he came to know Josefino Rejuso way back on February 19, 1972, when the latter was demonstrating karate lessons at the wharf of Masbate. But there is no evidence on record that Josefino Rejuso knew karate, a special art of offense and defense. How could Alba remember February 19, 1972 as the date? Josefino Rejuso is not from Masbate, Masbate but from San Jacinto (Ticao Island), Masbate.

"After Josefino Rejuso was allegedly shot by Arcueno, Alba said: 'I hurriedly went home.' He did not say that he approached Josefino Rejuso. As a matter of fact, on questioning by the lower court whether he gave assistance to the victim, Alba said, no, he did not. How could Alba say that Josefino Rejuso was hit by the bullet on the left forearm and right side of the body when the former was 15 meters from the scene of the crime?

"No witness corroborated the fact that Alba was at the scene of the shooting. Not even Arcueno could affirm the presence of Alba there at that time. But the presence of Khiong and Espenilla at the place of the shooting was never disputed by the defense of Valdemoro. Not even by Alba.

"Alba did not report to the authorities that he knew by face the person who shot Josefino Rejuso, only he did not know his name, until August 8, 1972 or 2 months and 11 days from May 27, 1972, the day of the shooting. Had Alba told the P.C. investigators or the police what he knew about the incident in May, or June, or even July, 1972, the police agencies could have checked his story with that of Khiong's and Espenilla's." [29]

3. Lastly, there can be no question that the killing was attended by treachery. The shooting was sudden, unexpected, from a distance of about ten arms lengths, without the least expectation on the part of the victim that he would be assaulted. Appellant deliberately employed a mode of execution which tended directly and specially to insure the consummation of the criminal act without risk to himself arising from the defense which the victim could have made. [30]

Neither can we find fault with the modification by the Court of Appeals of the penalty to reclusion perpetua, as recommended by the Solicitor General. Under article 248 of the Revised Penal Code, the penalty for the crime of Murder is reclusion temporal in its maximum period to death. In the absence of any modifying circumstances, the penalty should be imposed in its medium period, or, reclusion perpetua.

WHEREFORE, this Court affirms en toto the judgment under review sentencing the accused-appellant Philip Valdemoro "to suffer the penalty of reclusion perpetua with the accessory penalty of the law, and to indemnify the heirs of Josefino Rejuso the sum of P15,000.00 and to pay the costs."

SO ORDERED.

Makasiar, Fernandez, and Guerrero, JJ., concur.

Teehankee, J., (Chairman), files a brief concurrence.

[1] p. 75, Original Records.

[2] pp. 125-198, *ibid.*

[3] pp. 98-99, *ibid.*

- [4] p. 107, *ibid.*
- [5] p. 250, *ibid.*
- [6] p. 113, *ibid.*
- [7] pp. 116-124, *ibid.*
- [8] pp. 252-257, *ibid.*
- [9] t.s.n., Nov. 10, 1972, pp. 12-13.
- [10] t.s.n., Nov. 10, 1972, p. 13.
- [11] t.s.n., Nov. 8, 1972, pp. 19-56; Nov. 10, 1972, A.M., pp. 1-15, Khiong's testimony; Nov. 10, 1972, P.M., pp. 1-29, Espenilla's testimony.
- [12] t.s.n., Nov. 14, 1972, pp. 6, 11.
- [13] t.s.n., Nov. 15, 1972, pp. 4, 10, Exh. 3, pp. 125-126 Original Records.
- [14] t.s.n., Nov. 15, 1972, p. 15.
- [15] t.s.n., Nov. 15, 1972, A.M., pp. 17-19.
- [16] t.s.n., Nov. 15, 1972, P.M., pp. 9, 13, *supra*.
- [17] t.s.n., Nov. 16, 1972, A.M., pp. 10-12.
- [18] p. 4, *supra*.
- [19] t.s.n., Nov. 18, 1972, pp. 6, 8.
- [20] p. 14, *supra*.
- [21] Exh. 1, p. 216, Original Record.
- [22] t.s.n., Nov. 13, 1972, pp. 12-15.
- [23] t.s.n., Nov. 16, 1972, pp. 18-19.
- [24] *U.S. vs. Casipong*, 20 Phil. 178.
- [25] pp. 131-132, Court of Appeals Record.
- [26] *People vs. Pascual*, 90 SCRA 1 (1977).
- [27] *People vs. Kipte*, 42 SCRA 199 (1971).
- [28] *People vs. Amiscua*, 37 SCRA 813 (1971); *People vs. Mercado*, 38 SCRA 168 (1971).
- [29] pp. 130-131, Court of Appeals Record.
- [30] *People vs. Tamani*, 55 SCRA 153 (1974).
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CONCURRING OPINION

TEEHANKEE, J.:

I concur in the affirmance of the judgment of conviction. I wish to add only that the record shows manifestly as expounded in the Court's decision that there were crude efforts to subvert justice and to cover up the crime of the accused-appellant through a "fall guy" in the person of Ricardo Arcueno who "confessed" to the crime and defense witness Marianito Alba. A copy of this decision should be furnished the Honorable Minister of Justice for the institution of appropriate criminal proceedings against them as warranted by the evidence and the division clerk of court is accordingly so directed.

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