

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NORBERTO ROGALES, DEFENDANT AND APPELLANT.

G.R. No. L-17531. November 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Norberto Rogales was accused and convicted of murder before the Court of First Instance of Masbate having been sentenced to suffer cadena perpetua, to indemnify the heirs of the deceased in the sum of P6,000.00, and to pay the costs. From this decision he appealed.

At about ten o'clock in the evening of June 10, 1958, while a dance was being held in the yard of Elpidio Rogales situated in Balud, Masbate, during the celebration of a novena for the soul of the latter's deceased uncle, Aladino Besana, who was one of those who attended the dance, was suddenly fired upon by his cousin Norberto Rogales from a distance of five brazas. Besana slowly sank to a sitting position whereupon Norberto Rogales fired another shot which however failed to hit him.

Attracted by the shots, Salvador Andrade came from a house nearby and saw Besana in a sitting position while Norberto Rogales mounted his horse and sped away. Andrade asked Besana why he was shot to which the latter replied that Rogales shot him although he had done him no wrong. Besana was then carried to his house still alive although he remarked on the way that he was very weak because of his wounds. His nephew Felizardo Baclayo and his brother Wenceslao Besana reported the incident to the chief of police who sent Cpl. Eutiquio Corsiga to investigate. Cpl. Corsiga, the sanitary inspector, and another policeman repaired to the wounded man's house, where the corporal took down in writing Besana's statement which he thumbmarked with his own blood. Besana was later brought to the municipal building where he related to the chief of police how he was shot. Upon the advice of Dr. Serudo, municipal health officer, Besana was brought to the Masbate Provincial Hospital where he died three hours later due to severe internal hemorrhage. The autopsy performed upon Besana's body revealed the following wounds:

"1. Gunshot wound, entrance, 3/4 inch in diameter with a contusion collar of about 1 mm, lateral border, elbow, right.

2. Gunshot wound, exit, about 3/4 inch in diameter, medial surface, elbow, right.

3. Wound, circular, sutured, at level of 7th intercostal space, along the anterior axillary line, right, penetrating abdominal cavity.

"Internally:

1. Circular wounds, thru and thru, at the following internal organs:

a. right lobe of liver

b. posterior surface, cardiac portion of the stomach.

c. splenic flexure of the large intestine.

2. Bullet slug, lodged at the 8th intercostal space left, just beneath the skin, along the mid-axillary line."

Appellant's version of the incident indicates that he acted in self-defense. He stated that the deceased immediately prior to the incident was drunk challenging everybody in the dance hall. He then approached the deceased admonishing him to stop making trouble. The deceased did not mind him and instead took out a gun with his left hand and pointed it to appellant. Appellant held the deceased left hand with his right, twisting it, as he held the deceased's right hand with his left. Appellant then held the barrel of the gun which was stuck at the right side of the deceased at which juncture the gun fired, and when the deceased started to fall down appellant went home proceeding later to the PC barracks at Masbate to report the incident.

This version cannot be entertained not only because it is belied by the overwhelming evidence of the prosecution but it runs counter to the very demonstration made in court by appellant and his corroborating witness who all but proved the improbability of the infliction of the wounds in the manner shown which were the immediate cause of death. Indeed, the shooting of the deceased by appellant in the manner claimed by the prosecution is attested by no less than six witnesses whose credibility can hardly be disputed because of their disinterestedness. These witnesses are: Felizardo Baclayo, a nephew of appellant; Salvador Andrade, appellant's first cousin, Police Chief Dioscoro Inojas and Cpl. Eutiquio Corsiga, who intervened in the case in obedience to their duty as agents of the law, Dr. Alejandro F. Almario, resident physician of the Masbate Provincial Hospital, and Corazon Francisco, the victim's widow. In addition, we may mention the ante-mortem statement made by the victim hours before his death which points to appellant as the one who fired the shots. And it cannot be disputed that such statement partakes of the nature of a dying declaration because he made it when his hope for survival was very slim. In fact, he died a few hours after the incident.

The attempt made by appellant to show that he acted in self-defense proved futile for the same is refuted by the very demonstration he and his corroborating witness made in court. Despite the efforts they made during the demonstration to substantiate their theory, the lower court observed that the gun which allegedly was wielded by the victim pointed to directions other than the trajectory of the wound as found by the doctor who performed the autopsy. The story and the demonstration only serve to underscore the physical impossibility of defense's version as may be gleaned from the following observation made by the trial court:

"In the demonstration made by the accused and his witness Gonzales, the Court keenly observed with deep interest, the position of the gun when the same was allegedly touching the right arm of the deceased. The accused, demonstrating, allegedly parried with his right hand, by making a movement from left to right, the left hand of the victim, and then with his two hands held the left hand of Aladino holding the gun, twisted the hand towards inside of the body with both hands, and with his left hand he held the right hand of the victim, and his right hand holding no longer the left hand of Besana but the barrel of the gun to make it land at the right arm and at that position the gun fired. The position of the gun when the barrel was stuck to the right arm was observed carefully by the Court in both demonstrations as pointing downwards and not sideways. To cause the gun to point to the side so as to coincide with the trajectory of the bullet as found by Dr. Almario was to do it forcibly and intentionally, which would become artificial, and unnatural. Even in the two demonstrations, one by Norberto Rogales and Enrico Gonzales the barrel of the gun were pointing downwards and not sideways. This makes the story of the struggle for the gun, the grappling for the weapon a concoction, devised to coincide with the trajectory of the bullet inside the victim's body.

"The accused and his witness during the demonstration was observed by the Court, when they were holding the barrel of the gun to make it appear, with special effort, that the same would be a sidewise position to adjust with the known trajectory of the bullet as found by Dr. Almario, but unfortunately for them because of the awkwardness of the position in so doing, the barrel was always pointing downward. What was unadjustable

could not be adjusted. What cannot be done could not properly be done. Still, inspite of their effort to so effect their purpose to suit with the reality as found by the expert, the position continued to be in the natural position for the barrel of the gun to point downward. Under that situation the barrel of the gun, if naturally or ordinarily placed must necessarily point downward and never sidewise unless deliberately and purposely executed to fulfill a pre-determined position, which would be out of the natural and the ordinary. This court is led to believe and with reason that the story of the accused and his witness as to the struggle for the gun was composed and rehearsed not to say bluntly,—fabricated."

A circumstance which further discredits the story of the defense is the fact that no powder burns were found by the doctor on the wounds of the victim which are usually found when the fire is done at close range, which absence rather confirms the prosecution's claim that appellant fired at his victim at a distance of five brazas. Indeed, if it were true that the victim was drunk so much so that he was challenging everybody in the dance hall a commotion would have resulted and the dance would have been interrupted, but as the evidence shows, with the exception of the wounding of the deceased who was immediately taken to his house by some bystanders, the dance went on as if nothing had happened.

The pretense that the court erred in considering treachery as a qualifying circumstance must fail for no other conclusion can be drawn considering the suddenness with which appellant fired at his victim While the dance was going on, appellant suddenly showed up, and without much ado fired two shots at Aladino Besana who was one of the bystanders.

It is true that the prosecution failed to establish any motive for appellant to fire at and kill the deceased who was his cousin, but motive is not absolutely necessary to pin appellant's liability. Proof of motive is essential only in case of doubt as to the identity of the killer; not so when the killer's liability is established by clear, positive and direct evidence.[1]

The defense finds error in the fact that the trial court failed to consider in favor of appellant the mitigating circumstances of voluntary surrender and passion and obfuscation caused by the drunken state in which the deceased was then found immediately before the shooting. But appellant failed to establish the existence of these mitigating circumstances. In the first place, it was not proven to the satisfaction of the court that the deceased was then drunk, and, in the second, appellant did not go to the PC headquarters after the shooting to surrender but merely to report the incident. Indeed, he never evinced any desire to own the responsibility for the killing of the deceased.

We agree with counsel that the aggravating circumstance of premeditation and nocturnity were improperly considered by the trial court because the evidence is not sufficient to show the former while the latter is already deemed absorbed by treachery. However, the result would remain the same for, in the absence of any modifying circumstance, the proper penalty would be reclusion perpetua, which is the one imposed by the trial court.

With the modification that the accused be sentenced to reclusion perpetua, not cadena perpetua as employed by the trial court, we hereby affirm the judgment of the trial court in all other respects, with costs against appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] People vs. Miranda, 40 Off. Gaz., (2) 259; People vs. Cagauan, et al., 94 Phil., 118; 50 Off. Gaz. (1) 124; People vs. Sespene, 102 Phil., 199; People vs. Bugagao, L-11328, April 16, 1958; People vs. Divinagracia, 105 Phil., 281; People vs. Arcillas, L-11792, June 30, 1959; People vs. Luna, 110 Phil., 932, 59 Off. Gaz. [22] 3439; People vs. Corpuz, et al., 107 Phil., 44; 57 Off. 16, 2904.

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