

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELFIN MUIT, DEFENDANT-APPELLANT.

G.R. No. L-48875. October 21, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Appeal from the Decision of the Court of First Instance of Camarines Sur, Branch I (Naga City), in Criminal Case No. R-7 (1847), convicting the accused Delfin Muit, a retired PC 2nd Lieutenant, of Murder, and sentencing him to suffer the penalty of reclusion perpetua, for the gunning down of the victim, Rodolfo Torrero.

Before said victim was shot and killed, he and the accused's wife, Rosario Muit, played as the leading man and the leading lady in a drama presentation staged in barrio Tamban, municipality of Tinamban, Camarines Sur.[1] Because of said stage play and the fact that Mrs. Muit was the Barangay Zone President while Torrero was the Zone Auditor,[2] they used to meet frequently. These meetings spawned rumors around the barrio that they were having an affair, which eventually reached the ear of the accused, Delfin Muit, sometime in December of 1975.[3]

In the afternoon of February 26, 1976, at around 3:00 o'clock, Rodolfo Torrero was killed in the front yard of the house of the accused in Barrio Tamban, Camarines Sur. Said victim suffered three (3) gunshot wounds, the one on his chest proving fatal.[4]

The prosecution narrated the tragic incident as follows:

"On February 26, 1976 at about 2:45 o'clock in the afternoon, while the deceased Rodolfo Torrero, his wife Purificacion Nidea-Torrero, mother-in-law Maria Bataller, friend Benigno Gubatan and a child Francia Tresvalles, were passing by the house of accused Delfin Muit at barrio Tamban, Tinambac, Camarines Sur, on their way home from a picnic, the accused invited them to his house to take a rest (pp. 42, 44 tsn., Sept. 6, 1976; p. 130 tsn., Sept. 9, 1976). At that time Muit was alone as his wife and children were not around (pp. 5 & 24, tsn., Oct. 24, 1977). Once the group was inside his house, accused Muit who is a retired PC lieutenant remarked that his invitation showed that he had no ill-feel-ing against the Torreros and that he knew the latter had no ill-feeling also against him (p. 5, tsn., Sept. 6, 1976; p. 131, tsn., Sept. 9, 1976). As they engaged in some amenities, a group of barangay members and PC authorities in charge of the sanitation and cleanliness program on that particular day, which was Community Day, paid them a visit, and after a short talk, said group left (p. 57, tsn., Sept. 6, 1976). The deceased Torrero conducted the group on their way out and upon his return, accused Muit requested him to take a seat (p.58, id.).

The accused then confronted Rodolfo Torrero why the latter always visits his wife even during nighttime and why he often invites her out. Torrero replied that being the barangay zone auditor, he had to confer with the accused's wife on barangay matters as the latter was the barangay zone president (pp. 135-136, tsn., Sept. 9, 1976). The accused then asked why Torrero even gave food and money to his (accused's) children if he had no bad intention at all on his wife (id.). Torrero's wife answered that they did it out of pity because there were times when they would see the accused's children in need of food and money (id.). The accused, however, angrily stood up and countered, 'Why should you give when your husband had also a family to support?' (p. 138, id.). To avoid any trouble, the deceased Torrero likewise stood up and said, 'If that is the way we talked

about this will end to nothing, so it is better that I should leave' (p. 139, id.), and he proceeded to move out of the house (id.).

When Torrero was already outside the house of the accused and while walking along the pathway, the accused followed him and on reaching the door the accused shouted, 'Wait because we have not yet finished'. At that instant, the accused raised his left hand to-wards Torrero and with his right hand, he pulled out his .45 caliber pistol and aimed it at the deceased (pp. 140--141, id.). Angrily, he fired his gun at Torrero who was just 3 1/2 meters away, hitting the latter at the lower left side below the nape (pp. 22-24, & 44, tsn., Sept. 6 & 9, 1976; Necrop-sy Report, Exh. 'A', Rec.). On being hit by the bullet, Torrero spun from his left to the right, with his two hands inclined to the right, his face writhing in pain, his left elbow raised parallel to his armpit and his right hand placed on his breast (pp. 65-66, tsn., Sept. 6, 1976).

Upon hearing the gunshot, witness Gubatan immediately grab-bed and held the accused from be-hind with an embrace, and said, 'Manoy Delfin, why are you like that?' (pp. 63-64, id.). But as soon as Gubatan embraced the accused from behind, a second shot was fired, this time hitting the elevated left hand of Torrero, with the bullet penetrating through the breast (pp. 11-12, & 88, id.; Necropsy Report, Exh. 'A', Rec.). Consequently, Torrero fell on his knees, bent forward with face downward and body in a prone position his left elbow supporting him on his left lap while his right hand extended to the ground (p. 145, tsn., Sept. 9, 1976). Witness Gubatan on the other hand tightened his grip around the accused as he tried to wrestle with him (p. 67, tsn., Sept. 6, 1976).

The wife of Torrero, who was shocked by the first shot thereupon rushed towards her fallen husband (p. 143, 145-146, tsn., Sept. 9, 1976). But the accused on seeing Mrs. Torrero rushed towards the deceased, aimed his gun at her (p. 68, tsn., Sept. 6, 1976). Fortunately, witness Gubatan quickly grabbed the right forearm of the accused that held the gun and jerked it upward so that the third shot was fired towards the sky, thus missing its target (id.). Witness Gubatan then said, 'Manoy Delfin, that is enough' (id.). Gubatan thereafter moved the accused away and brought him near a coconut tree (id.). Mrs. Torrero, on the other hand, hugged her husband and cried for help, even as blood was oozing out from the deceased's body and mouth (pp. 67, 146-147, id.). Shortly thereafter, Torrero died (Exh. 'B', Rec.).

Near the coconut tree, the accused tried to free himself from the hold of Gubatan. He even pointed his gun at Gubatan and said, 'Set me free Benny or I will shoot you.' (p. 69, tsn., Sept. 6, 1976). When Gubatan could no longer hold the accused as the latter kept on struggling, he let him go and said, 'Alright Kuya Delfin, shoot me, after all I have no fault' (pp. 69-70, id.). Slowly, the accused put down his arm, his eyes at static condition (id.). He (appel-lant) then started to move away, and as he did, he made a short last look at his victim, after which, he continued on his way (id.). x x x"[5]

The evidence discloses that the accused surrendered himself and turned in the pistol he had used to the Detachment Commander of the Tamban Police Patrol Base soon after the incident.

On the other hand, the defense presented this version:

"x x x At about 2:45 p.m., 26 February 1976, the late Rodolfo Torrero, accompanied by his wife, Purificacion Nidea-Torrero, Benigno Gubatan, Frances Tresvalles, and his mother, Maria Bataller, had come from a picnic (it was a Sunday), when they passed by the house of Muit (in barrio Tamban, Tinambac, Camarines Sur). Muit was at the door of his house, because he was about to leave to visit his farm and had tucked his 45-caliber pistol in his front waistline, under his T-shirt. Muit invited Torrero and his companions to drop by. The invi-tation was accepted. Muit was alone in his house, because his wife and children were in Naga City at that time.

After the usual amenities between host and guests, another group, which was conducting an inspection of the houses in the zone in connect-ion with community activities, arrived. This second group soon left, and Muit and the group of Torrero resumed their conversation.

Torrero was carrying a bolo which was slung in its scabbard and was hanging from his right shoulder. He was left-handed.

When the conversation was resumed, Torrero took offense at what Muit brought up and, in a huff, stood up and walked toward the door. Muit followed him, asking Torrero not to leave, then a shot was fired. Other shots - the number is controverted - were fired and Torrero fell.

Gubatan embraced Muit from behind before or after -- this is also controversial -- the second shot.

Torrero suffered from 3 gunshot wounds: 1) on the left arm; 2) on the chest, the fatal one, the bullet entering from the front and exiting at the back; and 3) a superficial one on the nape.

These wounds were inflicted by shots fired from the .45-caliber pistol licensed in the name of Muit as a retired PC second lieutenant. The first shot, deliberately fired by Muit, hit Torrero on the left arm; the second shot, fired while the gun was still held by Muit, hit Torrero on the chest; while the third wound was obviously inflicted last, although none of the witnesses could tell the precise moment of its infliction. It was, however, the opinion of Dr. Froyalde (TSN-trial of 6 Sept. 1976, p. 23) that this wound was inflicted when Torrero was already lying on the ground.

The bolo of Torrero was already drawn from its scabbard when the sketch of the scene was drawn by Patrolman Darilay, minutes after the shooting, and was also shown in the photographs taken of the body of Torrero where it fell (Exhs. 1, 1-B & 1-C). This fact was also confirmed by Gubatan (TSN-trial of 6 Sept. 1976, p. 79), and by Mrs. Torrero (TSN-trial of 9 Sept. 1976, p. 159).

Muit did not get near the body of Torrero after the latter fell, but immediately proceeded to the PC detachment to surrender himself and his gun.”[6]

The Trial Court accorded credence to the version of the prosecution and, on July 24, 1978, rendered its Decision with the following dispositive portion:

"WHEREFORE, the Court finds the accused, Delfin Muit, guilty beyond reasonable doubt of the crime of Murder for having gunned down the late Rodolfo Torrero treacherously to death (People vs. Aguilar, 86 Phil. 693), with the aggravating circumstances of evident premeditation (People vs. Causi, G.R. No. L-16498, June 29, 1963). However, the accused Delfin Muit, after the dead-ly incident surrendered himself including the 45 caliber pistol and its license to the detachment commander of Tamban, which act is considered a mitigating circumstance which offsets the aggravating circumstance of evident premeditation, hereby sentences him to suffer the penalty of RECLUSION PERPETUA (life) and to pay the following damages to the heirs of the victim, as itemized, to wit:

- (a) P12,000.00 by reason of the death of the victim, Rodolfo Torrero;
- (b) P5,000.00 in concept of actual and moral damages; and
- (c) P5,000.00 in concept of exemplary damages, and to pay the costs.”[7]

In this appeal, appellant maintains that the Trial Court erred:

"1. In denying the accused his right to be heard by refusing to allow the accused to present a vital witness in his defense who could have proved that the principal witness for the prosecution, far from being the disinterested person that he claimed to be, was actually interested personally in prosecuting the accused;

2. In denying the accused his right to due process of law, by --?

2.1 - Ignoring facts established clearly in evidence, and relying instead on baseless presumptions;

2.2 - Violating the accused's right to remain silent; and

2.3 - Being palpably biased against the accused; and

3. In rejecting the accused's plea of self-defense and accident; and in convicting the accused." [8]

The appeal is without merit.

1. After trial had terminated and within the period to file memoranda, the defense moved to reopen trial "so that Jesus Evangelista may be allowed to testify and the defense could prove the bias of the said principal witness (Benigno Gubatan) for the prosecution". Jesus Evangelista was to testify on the alleged illicit relations between prosecution witness Benigno Gubatan and Mrs. Evangelista, formerly the victim's wife, who remarried after she was widowed. The Trial Court denied reopening on the ground that even assuming such liaison, it had happened in 1977 whereas Gubatan had submitted himself as government witness as early as March 4, 1976, besides the fact that it would not prove bias on the part of Gubatan, who was an eyewitness to the tragic incident, nor the culpability or non-culpability of the accused.

We find no reversible error. The reopening of a case for the reception of further evidence lies within the sound discretion of the Trial Court.[9] Besides, as pointed out by said Court, it is very possible that Jesus Evangelista was merely smitten with jealousy, and the alleged illicit relationship pure conjecture. Additionally, even if Jesus Evangelista's testimony could prove bias on the part of Benigno Gubatan, the latter was not the only prosecution witness who testified as to the culpability of appellant. It should also be noted that Benigno Gubatan, was subjected to rigid cross-examination by the defense counsel, who was thereby given all the opportunity to impeach the credibility of said declarant.[10]

2. Contrary to the defense posture, the accused was fully afforded his right to be heard and to present his defense. The criterion is:

"x x x if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law. x x x" [11]

The appealed Decision sufficiently meets that standard. The judgment of the Trial Court is substantiated by the evidence. The contention that it had ignored and unreasonably rejected the testimonies of defense witnesses Herminigildo Bermido and Alfredo Martinez is untenable. Bermido's story that he had gone to barrio Tamban, precisely to see the accused in connection with the purchase of railroad ties; that he had witnessed the shooting incident from a distance and that he saw the deceased try to hack the accused, but that he left immediately after; that he never mentioned the incident to the authorities, nor did he approach the accused after the incident, is unnatural behavior and does not inspire belief. Having gone precisely to meet with the accused he could have shown concern at the very least. Martinez did not witness the actual incident because he was buying a cigarette but merely corroborated Bermido's story that they had gone to Barrio Tamban precisely to see the accused. A reading of their declarations, indeed, casts doubt as to their presence near the scene of the crime. Their version was unconvincing compared to the forthright testimonies of the prosecution witnesses. Besides, the appraisal by a Trial Court of the credibility of witnesses is entitled to the greatest respect in the absence of established exceptions.

The defense faults the Trial Court for having violated the accused's right to remain silent in that the Court took against the latter his failure to report to the Detachment Commander at the time of his surrender his plea of self-defense. What the Trial Judge did, however, was merely to draw an inference from the accused's failure to volunteer that information, which would have been the most natural reaction. It should also be noted that the accused was neither under investigation nor interrogation so that his right against self-incrimination was never

endangered.

The alleged bias of the Trial Judge against the accused is without basis. The clarificatory questions propounded by him during the trial were intended to test the credibility of witnesses and to extract the truth. That the Trial Judge had ordered the accused transferred to Muntinlupa after conviction is no manifestation of bias considering that this Tribunal had upheld said action in its Resolution dated February 21, 1979.

3. The accused's plea of self-defense and accident is unavailing for being inconsistent with the environmental milieu of the case. Having invoked self-defense, he has the burden of proving it^[12], and must establish the same by clear, satisfactory and convincing evidence.^[13]

The defense submission is that the accused had no intent to kill and that he drew his gun in self-defense and to disarm the victim of his bolo; that the first shot, which he had deliberately fired, hit the victim on his left arm; that the fatal second shot which hit the victim on his chest, was fired accidentally as a direct consequence of Gubatan's embracing the accused from behind; while the third shot hit the victim at the nape of the neck when the victim was already prostrate on the ground.

That was not the sequence of the occurrence as established by the evidence. The victim did not try to hack the accused with his (victim's) bolo that hung from his right shoulder. There was no reason for him to physically harm the accused having already decided to leave the accused's house in order to avoid trouble.^[14] He was already out of the front yard of the accused's house, about four meters more or less from its "lean to",^[15] when he was shot at. The fact that the bolo was found lying on the victim's side out of its scabbard is no proof that the victim had used it. It must have dropped as the accused fell to the ground after having been hit. What is established by the evidence is that the victim was hit by a bullet at the nape or back portion of the neck at the first shot. The victim spun around from left to right involuntarily, at which point he was hit by the second shot on the left arm and on his chest. The third shot did not hit its mark as it was deflected upward by Gubatan who jerked the accused's hand skyward. Clearly, therefore, the accused had treacherously shot the victim at the back thereby disproving the element of unlawful aggression on the victim's part, which the defense seeks to establish as an essential element of self-defense.

Appellant's submission that the fatal second shot was unintentional and was the direct consequence of the act of Gubatan in embracing him from behind is also untenable. As demonstrated by Gubatan during the trial, Gubatan had embraced appellant around the chest in such a way that appellant was still free to use his right hand which was holding the gun.

"COURT

Q How come that he was able to fire for the second time when you were holding the accused?

A You noticed, sir, that in my demonstration I was holding him like this, instead of down there, so this was free, the right hand. (witness referring to the right hand.)"^[16]

Treachery has been undeniably proven. The accused was armed with a .45 caliber pistol and made full use of it. The victim was first hit at the nape or back portion of the neck.^[17] He was fired at suddenly and unexpectedly, devoid of any opportunity to defend himself or to retaliate.

"COURT

Q When he was shot at, was the back of your husband towards Mr. Mui or Mr. Mui was facing your husband or your husband facing Mr. Mui?

A His back was towards Mr. Mui.

Q In other words, he was shot at the back?

A Yes, sir.

x x x x x x x x

"COURT

Q The first time you said he was hit on the side, will you indicate that?

A Her (witness touching the lower part of the neck at the back of the interpreter).

Q That was the first time he was hit there at the first shot?

A Yes, sir."[18]

There should be no question then that the crime committed is Murder with the qualifying aggravating circumstance of treachery.

We agree with the defense, however, that evident premeditation, as a generic aggravating circumstance, has not been adequately shown. To properly appreciate that circumstance, it is necessary to establish: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to this determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect.[19] As there is dearth of evidence as to when appellant first conceived of killing the deceased and that he was afforded sufficient time to reflect on the consequences of his contemplated crime before its final execution, the circumstance of evident premeditation cannot be appreciated.

On the other side of the coin, to be appreciated in favor of the accused are the mitigating circumstances of voluntary surrender, and passion and obfuscation. There can be no question that the accused was driven strongly by jealousy because of the rumors regarding the amorous relationship between his wife and the victim. The feeling of resentment resulting from rivalry in amorous relations with a woman is a powerful stimulant to jealousy and is sufficient to produce loss of reason and self-control. In other words, it is a powerful instigator of jealousy and prone to produce anger and obfuscation.[20]

The crime of Murder, under Article 248 of the Revised Penal Code, is punishable by reclusion temporal in its maximum period to death. Considering the two mitigating circumstances present, without any aggravating circumstances to offset them, the penalty next lower to that prescribed is imposable, or, prision mayor in its maximum period to reclusion temporal in its medium period.

WHEREFORE, modifying the judgment appealed from, the accused Delfin Mui, is hereby sentenced to suffer the indeterminate penalty of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, with the judgment being affirmed in all other respects.

Costs against the accused-appellant, Delfin Mui.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] t.s.n., October 24, 1977, pp. 17, 30-31; Appellee's Brief, pp. 8-9, Rollo, p. 109.

[2] t.s.n., September 9, 1976, pp. 135-136.

- [3] t.s.n., October 24, 1977, pp. 31-32.
- [4] Exhibit "A", p. 19, CFI Rollo; t.s.n., September 6, 1976, pp. 10-40.
- [5] pp. 2-6, People's Brief.
- [6] pp. 4-5, Appellant's Brief.
- [7] p. 24, Judgment, p. 28, Rollo.
- [8] p. 1, Appellant's Brief, p. 68, Rollo.
- [9] U.S. vs. Visquera, et al., 4 Phil. 381 (1905); U.S. vs. Cinco, et al., 8 Phil. 388 (1907); U.S. vs. Tria, 17 Phil. 303 (1910); Alvarez vs. Guevara Wee, 47 Phil. 13 (1924); Gaas vs. Fortich, 54 Phil. 196, 200 (1929).
- [10] t.s.n., September 6, 1976, pp. 74-93.
- [11] People vs. Castillo, 76 Phil. 73 (1946).
- [12] People vs. Ansoyon, 75 Phil. 772 (1946); People vs. Clemente, 21 SCRA 261 (1967); People vs. Diva, 23 SCRA 333 (1968); People vs. Talaboc, Jr., 30 SCRA 87 (1969); People vs. Verzola, 80 SCRA 600-601 (1977).
- [13] People vs. Davis, L-13337, February 16, 1961; People vs. Solaña, L-13967, September 29, 1962; People vs. Mendoza, L-16392, January 30, 1965; People vs. Libed, L-20431, June 23, 1965; People vs. Ordiales, 42 SCRA 239 (1971); People vs. Padiernos, 69 SCRA 484 (1976); People vs. Pay-an, 84 SCRA 354 (1978).
- [14] t.s.n., September 6, 1976, pp. 59-60.
- [15] Exhibit "2", p. 9, CFI Rollo.
- [16] t.s.n., September 6, 1976, p. 66.
- [17] t.s.n., September 6, 1976, pp. 21-23; September 9, 1976, pp. 141-144.
- [18] t.s.n., September 9, 1976, pp. 143; 144
- [19] People vs. Ardisa, 55 SCRA 245 (1974); People vs. Ramolete, 56 SCRA 66 (1974); People vs. Cardenas, 56 SCRA 631 (1974); People vs. Manzano, 58 SCRA 250 (1974); People vs. Lacao, 60 SCRA 89 (1974).
- [20] Aquino's Revised Penal Code, Vol. I, Book I, p. 251, 1976 ed. citing U.S. vs. Santillan, 4 Phil. 170 (1905).

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