

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO VILLASENOK Y CORDERO ALIAS RENY, DEFENDANT-APPELLANT.

G.R. No. L-28574. October 24, 1970

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The accused Reynaldo Villaseñor was found by the trial court guilty of direct assault upon an agent of a person in authority with murder and was sentenced to death, to indemnify the heirs of the deceased police sergeant Alfonso Madia in the sum of six thousand pesos (P6,000.00), and to pay the costs, from which he appealed (p. 607, rec).

After the prosecution rested its case, the appellant submitted the case for decision, expressly waiving his right to present evidence in his behalf (pp. 508, 568, rec).

The accused Reynaldo Villaseñor was in 1964 then a special agent of the Provincial Governor of Marinduque, and, as such special agent, was issued by Pacifico Monteagudo, property clerk of the Provincial Treasurer's Office, a .38 caliber pistol, with serial number 307829 together with a magazine and holster but without ammunition (Exh. H-4). The corresponding receipt therefor was duly signed by the accused (Exhs. H, H-1 to H-4).

The evidence of the prosecution shows that the deceased police sergeant Madia, single, was a graduate in Criminology from the Philippine College of Criminology in Manila, became a member of the Police Force of Boac, Marinduque, and was promoted to police sergeant sometime in February, 1964.

On April 26, 1964, he was detailed as field sergeant on a twenty-four-hour duty, which detail was recorded in the police blotter (Exhs. B and B-1). As such field sergeant, his area of assignment was the entire municipality of Boac.

At about eight o'clock in the evening of April 26, 1964, sergeant Madia, together with patrolmen Serafm Sebua and Lope Jimena, was patrolling the market place of Boac. They were seated in a row with their backs to and near the wall of the Salvo drugstore, about one and one-half meters from the police outpost at the street intersection (Exhs. G and G-1V Sergeant Madia was seated on an empty wooden box with patrolman Sebua to his left and to his right was patrolman Jimena, who was then seated on a batibot chair. Sergeant Madia was then in civilian clothing consisting of dark pants and a striped polo shirt tucked in his waist (see pictures Exhs. E, E-1 to E-1 6). His gun was buttoned up inside the leather holster hanging from his belt by his right waist.

Beside the outpost is an electric post from which hanged a 50-watt bulb, which was then lighted about four meters above the ground.

The said police outpost and the Salvo drugstore are at the corner of Isok Street and another street facing the market place.

While the three were conversing between 8:00 and 8:30 that evening, the accused suddenly appeared about three feet in front of them with a drawn gun, asked sergeant Madia whether he was still mad at him, and immediately

fired four shots at Madia before the latter could reply and before anyone of them could do anything. Fearing that they might be hit, policemen Jimena and Sebuja ran away, with patrolman Sebuja seeking cover in a refreshment parlor across the street about twenty-five meters away. As he sprinted towards the other side of the street, patrolman Sebuja heard three more shots. Thereafter, he saw the accused fleeing towards the direction of the municipality of Mogpog. After the accused had gone, patrolmen Sebuja and Jimena returned to the place of the incident and saw sergeant Madia lying on his back drenched in his own blood, with his gun still buttoned up inside its holster hanging by his right waist and touching the ground (Exhs. E-3 and E-1 1). Policeman Sebuja sent somebody to call a photographer and instructed the people gathered around to keep away from the scene of the incident, which he guarded until Mayor Jose Madrigal, chief of police Jose Reyes and PC. Major Nacino arrived followed by PC. sergeant Andres Jinang, who was summoned by Major Nacino. Sgt. Jinang conducted an investigation on the spot as well as inspected the place of the incident where he found seven empty shells and four slugs all coming from a .38 caliber pistol (Exhs. 1,1-1 to 1-12). Another slug was found embedded in the asphalt under the corpse of the victim. Said fifth slug was turned over to PC. Sgt. Jinang the following morning.

As directed by Sgt. Jinang, commercial photographer Sergio Montemar took eleven shots of the victim and scene of the crime that same night before the cadaver was brought to the hospital that same night (Exhs. E, E-1 to E-10), which pictures he turned over to the provincial fiscal.

State witness Serafin Sebuja clearly and positively identified the accused appellant Reynaldo Villaseflor as the assailant. He could not have failed to identify the appellant because the appellant was only about three feet away from him and beneath a lighted 50-watt bulb, about four meters above them atop a post about two yards away, even if his eyes get watery since the Japanese occupation, for he was not then wearing the dark glasses he had on while testifying and he could then as now see clearly about 20 meters away. He categorically stated that he was sure that it was the appellant who shot the victim. The record does not disclose any ulterior motive on his part to perjure himself against appellant. The appellant was the only person directly in front of them confronting the deceased with a drawn gun. This positive identification of appellant as the murderer renders unnecessary any proof of motive on his part.[1]

Appellant's belief that policeman Lope Jimena, who was with the victim and Sebuja at the time of the assault, would have been a better witness as to identity of the assailant, is pure speculation. The fact that he might have been a better witness, does not necessarily negate Sebuja's ability to see the face and heard the voice of the accused moments before he fired the first four shots at the victim.

The candor of Sebuja in admitting that his affidavit does not contain the number of shots fired by the accused and instead states that the accused shot the deceased without asking any question, accentuates his truthfulness. He explained that he did not notice the discrepancy when he signed it.

That the prosecution did not present patrolman Jimena as a witness, cannot be considered a reversible error; because, aside from the fact that Jimena was merely a corroborative witness and therefore not necessary for the prosecution to establish its case, he was equally available to the defense if the defense was minded to do so. The record shows that the prosecution reserved patrolman Jimena for rebuttal, but which reservation became useless because the accused submitted the case for decision and expressly waived his right to present evidence in his defense.

However, as correctly appreciated by the defense and the Solicitor General, the crime of direct assault upon an agent of a person in authority has not been established by evidence beyond reasonable doubt. The record is bereft of any proof even remotely suggesting that the accused herein knew that the victim was then performing his official functions as police sergeant. The victim was not in uniform at the time. As shown by pictures (Exhs. E,

E-1, E-2, E-7 and E-1 1), the deceased was then wearing dark pants and a polo shirt tucked inside his waistline. While the deceased then had his service firearm buttoned inside its holster hanging by his right waist, and was then with two of his policemen, these facts alone do not indicate that he was then in the performance of his police duties. And there is no showing that the accused appellant personally knew of the entry in the police blotter that deceased was then on twenty-four-hour duty as field sergeant (Exhs. D, D-1 and D-2, p. 62 of Exh. D). Much less is there proof that the assault on the victim was provoked, or by reason of an act performed, by the victim in his official capacity.[2]

Likewise, there is no evidence of the qualifying circumstance of evident premeditation. The time interval between the act, if any, on the part of the deceased that might have provoked the accused appellant, or the time when the deceased might have intimated his anger at appellant and the actual killing, is not shown. Consequently, we cannot determine whether the accused appellant had sufficient time within which to reflect on the evil character of the crime before he committed the same.

But the qualifying circumstance of treachery had been demonstrated beyond reasonable doubt. While mere suddenness of a frontal attack may not necessarily be indicative of treachery; the circumstances surrounding the frontal attack made by the appellant on his victim, indubitably demonstrate treachery on his part, despite the fact that both the victim and patrolman Lope Jimena were armed, policeman Sebu was with them, and the scene was well-lighted by a 50-watt bulb just about four meters above them.

(1) The appearance of the accused before the three was so sudden that the three did not even notice the direction from where he came, and patrolman Sebu was so surprised that he just gaped at the accused, gripped by the fear that he might be hit after the accused fired his already drawn gun at the victim.

(2) The accused appeared with a drawn gun pointed directly at the deceased ready to fire at will the moment anyone of the three, more particularly the victim, would make any move.

(3) The accused fired four successive shots at the victim at a distance of about three feet soon after he asked the victim whether he was still angry with him, before the victim could retort and before anyone of the three could stir in their seats.

(4) To further insure that the victim could not possibly adopt any measure of self-defense, the accused appellant pumped four successive shots into the cardiac and pleural cavities of the victim, followed by three more shots as policemen Sebu and Jimena scampered for their own safety. The victim was not even able to reach for his gun, much less unbutton the flap which secured it inside its holster. That seven shots were fired by the accused at the victim, as evidenced by the seven empty shells and five slugs of a .38 caliber firearm found near the body of the victim, shows that one bullet was already inside the chamber of the gun while six bullets were in its magazine. One of the five slugs was found embedded in the asphalt beneath the cadaver of the victim. The two other slugs could not be located. The victim sustained thirteen wounds including one above the left nipple, another below the left nipple, one on the right hypochondriac region, one on the left abdomen above the umbilicus and one on the right abdomen above the umbilicus. From the sketch made by Dr. Modesto Santos, the victim sustained six entrance wounds on the frontal part of the body marked as nos. 4,5,6,7,8 and 9 in Exh. C-1, four exit wounds marked nos. 10, 11, 12 and 13, Exh. C-2 and a gunshot wound on the forearm. Of the thirteen wounds, according to the doctor, three were fatal, two of which were above and below the left nipple (see Exhs. C and C- 1).

As suddenly as he appeared in front of the victim, the appellant disappeared in a flash into the darkness beyond the circle of light coming from the lighted 50-watt bulb, after emptying his firearm into the victim's body, thus eluding apprehension, even as the chief of police and a companion pursued him towards the neighboring town of Mogpog.

The instant case can be distinguished from *People vs. Aleta, et al.*,^[3] where the accused, after asking the victim whether he was still mad at him, suddenly stabbed with a balisong the victim, who was able to run and later grappled with the accused. But in the case at bar, the victim, who was close to the wall of the drugstore and therefore could not run, could not parry four bullets fired in rapid succession from an already drawn gun from a distance of about three feet.

The cases of *People vs. Vacal*^[4] and *People vs. Casalme*^[5] are more analogous to the case at bar.

In the case of *People vs. Vacal*, Filomeno Vacal and Fidencio Vacal were accused as principals of the murder of Ignacio Ruiz. Filomeno Vacal was convicted, but Fidencio Vacal was acquitted on the ground of insufficient evidence to identify him as the carbine-armed companion of the former.

On the starry night of March 20, 1960, at about ten o'clock, four men, Hilario Baclayon, Ignacio Ruiz, Nemesio Musico and Serapio Humangit, were walking single file in that order on the trail from Katublian to Katong, Hinunangan, Southern Leyte. As they neared the cable post, Filomeno Vacal, with a pistol in his right hand, suddenly appeared near the right side of Ignacio Ruiz and shot him dead. Filomeno Vacal was recognized and positively identified by Baclayon, Musico and Humangit as the one who shot the deceased.

Held: "The lower court did not err in finding that the killing was attended with the qualifying circumstance of treachery. There was absolutely no defense against the sudden pistol shot which caused the instantaneous death of the victim."^[6]

"The stars were shining in the sky" and "Visibility must have been fair because the accused himself was able to recognize and single out his victim from among the four pedestrians."^[7]

In the case of *People vs. Casalme*, Macario Casalme and Domingo Veras were both foremen in the Canlubag Sugar Estate. On December 19, 1959, at six in the morning, Casalme went with Marciano Tuason to the house of Marcelino Meneses. On leaving the house, the two met Domingo Veras. Veras gave Casalme a fist blow on the left cheek, whereupon the latter withdrew and ran to Meneses' house at the same time shouting to Veras "Magbabayad ka rin." Asked why he acted the way he did, Veras explained to Tuason that Casalme had called him "sipsip" and spat on his face.

At about seven in the evening of the next day, December 20, Veras was walking home on the barrio road. There were two stores near each other on the roadside, both of which were well illuminated. Nearby also was the house of appellant's sister, Juliana Bijis. As Veras reached a spot in front of the space between the two stores, he encountered Casalme, who had just come out of his sister's premises. Casalme uttered just two words — "panahon na" — aimed his pistol at Veras and fired five times in quick succession. The latter could only utter "huwag" before the first shot.

Held: "The commission of the offense was accompanied with treachery as found by the trial court. Counsel contends that since the deceased had been threatened since the day before the shooting, when appellant said "magbabayad ka rin," he was not caught by surprise at all. But treachery does not connote the element of surprise alone, but exist when the offender employs means, methods, or forms which tend directly and specially to insure the execution of the offense, without risk to himself arising from the defense which the offended party might make. (Art. 14, par. 16, Revised Penal Code). When appellant accosted his victim, who could have no idea as to just how the threat to him would be carried out, and without warning shot him five times, nothing could possibly have been done by the latter in his own defense."

The testimony of Dr. Santos to the effect that the wounds were inflicted by a firearm because the wounds were small and because of the presence of abrasions and contusions at the rims of the wounds, is corroborated by the

presence of seven empty shells and five slugs near and under the cadaver. As aforesaid, one of the slugs was found embedded in the asphalt beneath the sprawled body of the hapless victim.

But use of a firearm cannot be appreciated as an aggravating circumstance, for by express provision of law, it is considered only in robbery under Art. 295 or, if the gun is unlicensed, under Art. 296. Employment of firearms is not one of the generic aggravating circumstances in Art. 14 nor a qualifying circumstances in Art. 248.

The aggravating circumstance of nocturnity could not be appreciated separately from, for it is deemed absorbed in, treachery.[8]

However, the mitigating circumstance of voluntary surrender should be considered in favor of the accused appellant; because, while the warrant for his arrest was issued on April 28, 1964, (p. 21, rec), two days after the incident, said warrant had not been served on the accused appellant as shown by the fact that it does not bear on the appropriate blanks on the dorsal side thereof the required return of service of the same.

No adverse inference can be deduced from the waiver on the part of the appellant to present evidence in his defense, since it is his constitutional right to remain silent as much as it is his right to incriminate himself. However, despite this silence the evidence established beyond moral certainty that he is guilty of murder, qualified by treachery, but mitigated by voluntary surrender.

The indemnity should be increased to twelve thousand pesos (P 12,000.00) in line with settled jurisprudence on this score.

WHEREFORE, the accused appellant Reynaldo Villasenor is hereby sentenced for murder to an indeterminate term of imprisonment ranging from 17 years and 4 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum, to indemnify the heirs of the deceased police sergeant Alfonso Madia, in the sum of twelve thousand pesos (P12,000.00) and to pay the costs. As above modified, the judgment appealed from is affirmed in all other respects.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee and Barredo, JJ., concur.

Concepcion C. J., and Villamor, J., did not take part.

[1] People vs. Bautista, L-27638, Nov. 28, 1969; People vs. Raquel, 12 SCRA, 441.

[2] Uytiaco vs. Court of Appeals, L-20246, April 24, 1967, 19 SCRA, 744; People vs. Rellin, 77 Phil. 1038; U.S. vs. Alvear, 35 Phil. 626.

[3] L-9684, March 30, 1958.

[4] 27 SCRA 24, 29, Feb. 27, 1969.

[5] 17 SCRA 717, 720, July 26, 1966.

[6] People vs. Vacal, 27 SCRA 29, Feb. 27, 1969.

[7] Ibid., p. 28.

[8] People vs. Bolivar, et al., L-9045, Sept. 28, 1956; People vs. Young, et al., 83 Phil. 702.

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