

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

G.R. No. L-35475. March 16, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This crime of passion stemmed from the rivalry between the appellant and the deceased for the favors of a taxi-dancer.

Delfin Bustos, his uncle Engracio Bustos alias "Gracing," and Pablito Bungay alias "Roger Pogi," were charged with murder in Criminal Case No. 6498 of the Court of First Instance of Pampanga in an amended Information dated June 17, 1969 which alleged:

"That on or about the 18th day of September, 1968, at barrio San Matias, municipality of Sto. Tomas, province of Pampanga, Philippines, and within the jurisdiction of this Hon. Court, the above named accused Delfin Bustos, Pablito Bungay alias 'Roger Pogi,' and Engracio Bustos alias 'Gracing,' with deliberate intent to kill, nighttime purposely sought to facilitate the commission of the offense, conspiring together and mutually helping one another, with treachery, evident premeditation, and with grave abuse of superior strength, did then and there willfully, unlawfully and feloniously fire at and shoot Cristorey Lopez with a firearm, caliber .22, inflicting mortal and fatal injuries upon the said Cristorey Lopez, the bullet entering the right chest, lacerating the upper and lower lobes of the left lungs, and which injuries caused the death of the said Cristorey Lopez shortly thereafter," (p. 7. Rollo.)

Upon being arraigned on August 11, 1969, Delfin Bustos and Engracio Bustos pleaded "not guilty." The third accused Pablito Bungay, alias "Roger Pogi," has not yet been apprehended.

On the basis of the evidence presented at the trial, the court found the following facts to have been established:

Between six and seven o'clock in the evening of September 18, 1968, Cristorey Lopez was shot inside the compound of the Lopez Apartments owned by his family in Sitio Moras, San Matias, Sto. Tomas, Pampanga.

The incident was witnessed by Rodolfo Ortoleza, a thirteen-year old boy who lives with his sister Cora in one of the Lopez apartments, for the compound was well illumined with electric bulbs. From a distance of about one arm's length (isang dipa), he watched as "Roger Pogi" bodily dragged Cristorey Lopez out of the fourth apartment which was occupied by two taxi-dancers named Tessie and Lita who were the common law wives of Engracio Bustos and Delfin Bustos, respectively. Lopez vainly called out for help. "Roger Pogi" had Lopez' arms pinioned around his waist while Engracio and Delfin walked on both sides of him. Lopez struggled to extricate himself but, in an instant, as soon as they stepped outside the door, Delfin Bustos shot him on the chest at close range with a .22 caliber revolver. "Roger Pogi" released his hold on the victim and allowed him to break away. Running and stumbling toward the gate of the compound, Lopez met his older brother Jesus who had just arrived with a companion. Jesus immediately hailed a jeep to take his wounded brother to the Virgen delos Remedios Hospital. On the way to the hospital, Cristorey was gasping for breath. Blood was splattered all over his chest. He was in a

semi-conscious state. Nevertheless, he indicated to Jesus the exact spot where he had been shot and told Jesus that it was Delfin Bustos, his "rival," who shot him and that it was "Gracing" who gave the gun to Delfin. He expired at 9:00 o'clock that same night.

The autopsy report indicated that Lopez died of shock and internal hemorrhage secondary to a gunshot wound at the sternum of the second rib, fracture comminuted at the posterior left side, 7th rib and laceration of the upper and lower lobes of the left lung (p. 26, Rollo).

The incident was reported by Gonzalo Pineda to a traffic policeman, Patrolman Diosdado Canlas, at the San Matias crossing. Together with Patrolman Quiambao and Sergeant Daniel Canlas, Patrolman Diosdado Canlas immediately repaired to the scene of the crime to conduct an investigation. They interviewed Estelita (Lita) Ramos Javenir, Teresita (Tessie) Gumba Punsones, both taxi-dancers at the Pavilion Night Club in San Fernando, Pampanga, Jesus Bacud Palma, and Rodolfo Ortoleza, occupants of various apartments inside the Lopez compound. They were brought to the municipal building where their written statements were taken. They told Patrolman Canlas that they saw Delfin Bustos, Engracio Bustos, and "Roger Pogi" come out of the taxi-dancers' apartment and that Cristorey Lopez was shot by Delfin Bustos. They also showed the policeman the exact spot where the killing occurred. The girls also gave sworn statements before the Acting Chief of Police. However, they and Jesus Palma could not be presented at the trial because they moved out of Sto. Tomas to unknown addresses soon after the commission of the crime.

Felicidad Miranda, rental collector of the Lopez compound, testified that at around 6:00 o'clock in the afternoon of September 19, 1968, she was in the Lopez compound to inspect the apartments and collect the rentals from the tenants. She saw Cristorey inside the apartment of the taxi-dancer. She knew that both taxi-dancers were girlfriends of Delfin and Engracio Bustos. She had earlier advised Cristorey Lopez "not to be so close to the girls."

Delfin Bustos and his uncle Engracio Bustos admitted during the trial that they were in Tessie's and Lita's apartment on September 18, 1968 at six or seven in the evening. They had gone to the Lopez compound to look for Agustin Bustos, because they needed a car to bring Delfin's sister, Pamela, to the Manila International Airport. They went to Tessie's apartment to look for Agustin. They had a ten-minute conversation with Tessie. When they stepped out of the apartment, they allegedly heard a shot. They saw an injured man about seven (7) meters away kneeling with head bowed, and being held by somebody whom they failed to recognize. The two men were grappling with each other. They were allegedly so terrified that they scaled the concrete wall of the compound and fled toward the MacArthur Highway.

Agustin Bustos testified that he had been invited to the birthday party of a certain Lita in one of the apartments. From where he sat at Lita's party, he saw Cristorey Lopez drinking beer with some persons in Tessie's apartment. A small boy informed him later that Delfin and Engracio were looking for him, so he got out of Lita's apartment to talk to them. He heard a shot. Most of the people scampered out of the front gate. He, Delfin, and Engracio jumped over the fence and ran toward the MacArthur Highway.

Delfin Bustos admitted on cross-examination, that on September 20, 1968, or two days after the shooting, his father Agustin advised him "to hide in the meanwhile as he (Agustin) would try to fix the case." So, he stopped working at the La Mallorca and hid in his aunt's house in Pangasinan. On October 2, 1968, his father and some PC soldiers arrived and took him to Camp Olivas.

On March 15, 1977, the lower court rendered judgment finding Delfin Bustos guilty of murder but acquitting Engracio Bustos. The case against Pablito Bungay, alias "Roger Pogi" was archived pending his arrest. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds accused DELFIN BUSTOS guilty beyond reasonable doubt of the crime of MURDER and imposes upon him the penalty of RECLUSION PERPETUA, with the accessory penalties incident thereto; to indemnify the heirs of the victim Cristorey Lopez, the following: P12,000.00, as indemnity for the death of said Cristorey Lopez; P50,000.00, as indemnity for loss of earning capacity of the deceased; P7,560.00, as actual damages representing hospital, funeral and miscellaneous expenses; P10,000.00, as moral damages; P1,000.00, as attorney's fees, with costs of this suit (Heirs of Raymundo Castro vs. Bustos, No. L-25913, February 28, 1969). No subsidiary imprisonment is imposed In case of insolvency due to the nature of the penalty imposed (Article 39, R.P.C.).

"Accused ENGRACIO BUSTOS, alias "Gracing," is hereby acquitted on ground of reasonable doubt.

"The record of this case is hereby archived insofar as Pablito Bungay alias Roger Pogi is concerned." (pp. 34-35, Rollo.)

Delfin Bustos appealed to this Court.

Appellant argues that: (1) it was improbable for him to have shot Lopez because his companion "Roger Pogi" was directly behind the deceased; (2) that he could not have fired the gun, as the trajectory of the bullet was downward on the 2nd rib through the lower part of the 7th rib, and the deceased was admittedly taller than the appellant; (3) that the declaration of the deceased to his brother inside the jeep on the way to the hospital was not a dying declaration because: (a) the alleged statement came from a biased source; and (b) there was no evidence that Cristorey Lopez had abandoned hope of living.

The appeal is devoid of merit.

A review of the records of the case and a careful consideration of the arguments raised by the accused-appellant in his brief disclose no reason why we should not accord the usual respect given to the factual finding of the trial court that Delfin Bustos was the gunman who killed Cristorey Lopez. The shooting was witnessed by a 13-year old boy, Rodolfo Ortoleza. That the shot was fired at close range was substantiated by the presence of gun powder burns at the point of entry some 5 cm. at the level of the victim's second rib. As the appellant fired the gun at the side of the victim his co-accused "Roger Pogi" was in no danger of being hit also.

Ortoleza testified in a direct and candid manner, despite rigorous cross-examination. The minor inconsistencies in some details of his testimony do not destroy his credibility, but, on the contrary, are indicative of his truthfulness and of the fact that he had not been coached or rehearsed. His identification of the accused was clear and unequivocal. Mere denials by the accused, who admitted his presence at the scene of the crime, may not prevail against the categorical declarations of the prosecution witnesses that it was he who shot Rey Lopez.

The victim's dying declaration to his brother Jesus, that "his rival Delfin Bustos" shot him deserves full credit for: (1) it was made under the consciousness of impending death; (2) the declaration referred to the cause of the declarant's injury and impending death; and (3) the declarant was a competent witness (People vs. Balbas, 122 SCRA 859; People vs. Sabio, 102 SCRA 219). That the ante mortem declaration was made by the victim under consciousness of impending death can hardly be doubted for, as a matter of fact, he died some two hours later.

The appellant's flight and concealment of himself from the authorities, as well as the attempts of his family to "settle" the case with the Lopezes (p. 30, t.s.n., November 22, 1971) constitute an implied admission of his guilt (People vs. Ornoza, 151 SCRA 495; Sec. 24, Rule 130, Rules of Court).

Treachery in the commission of the crime was sufficiently proven by the un rebutted testimony of Ortoleza that "Roger Pogi," Engracio Bustos and Delfin Bustos forcibly dragged the struggling victim out of Tessie's apartment, that the victim was unarmed, and that, as soon as they were out of the door, Delfin shot Lopez at close

range, giving the victim no opportunity to flee or defend himself (pp. 8-19, t.s.n., Aug. 12, 1969)

Alevosia is present when the victim is defenseless and killed in such a manner as to insure the execution of the crime, or make it impossible or difficult for the victim to retaliate or at least defend himself (People vs. Gil Jumadaiao, 143 SCRA 371; People vs. Leoncio Yusep, 151 SCRA 248).

In view of all the foregoing, We find no reversible error in the trial court's finding that the appellant, Delfin Bustos, is guilty of murder.

WHEREFORE, with the modification that the death indemnity payable by the appellant Delfin Bustos to the heirs of Cristorey Lopez is increased to P30,000, the decision appealed from is affirmed, with costs against the said appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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