

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISOSTOMO PACULBA, DEFENDANT-APPELLANT.

G.R. Nos. L-37366-67. August 31, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

APPEAL from the judgment of the Court of First Instance of Zamboanga del Norte, Branch IV, convicting the accused, Crisostomo Paculba, of the crimes of Murder and Frustrated Murder.

The accused, Crisostomo Paculba, was charged with the crimes of Frustrated Murder (Criminal Case No. S-123) and Murder (Criminal Case No. S-122) in two (2) separate informations, filed before the Court of First Instance of Zamboanga del Norte, Branch IV, committed as follows:

1. Crim. Case No. S-123

"That in the evening on or about the 12th day of July, 1972, in the municipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together with one JOHN DOE who is still at large, armed with a firearm and with intent to kill by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shot one TARIOCA RINGGUIT thereby inflicting upon him a gunshot wound at the medial aspect of the right leg; thus performing all the acts of execution that would have produced the crime of Murder as a consequence but nevertheless did not produce it for reason of causes independent of the will of the accused, that is the timely and able medical assistance rendered to the victim which save his life.

"CONTRARY TO LAW, with the aggravating circumstance of treachery and evident premeditation.[1]

2. Crim. Case No. S-122

"That in the evening on or about the 12th day of July, 1972, in the municipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and helping one another with one JOHN DOE who is still at large, armed with a firearm and with intent to kill by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shot one MADJID RINGGUIT, thereby inflicting upon him a gunshot wound at the supra sternal area directing dorsally which caused his death. That as a result of the criminal acts of the herein accused the heirs of the victim suffered the following damages:

(a) Indemnity for the death of

the victim - - - - -

P12,000

(b) Loss of earning capacity - - - - -

5,000

(c) Moral damages -----

10,000

(d) Exemplary damages -----

10,000

TOTAL -----

P37,000

"CONTRARY TO LAW with the aggravating circumstances of treachery and evident premeditation."[2]

The cases were tried jointly and judgment was thereafter rendered, as follows:

"WHEREFORE, in view of the foregoing, the Court finds the accused Crisostomo Paculba, guilty beyond reasonable doubt of the crime of Murder and Frustrated Murder, and hereby sentences the accused for the crime of Murder, to serve a penalty of reclusion perpetua, to indemnify the heirs of the deceased Madjid Ringuit in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and for the crime of Frustrated Murder, to serve an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional as minimum to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal as maximum, and to pay the costs in both cases.

"The accused is given the full benefit of his preventive imprisonment in accordance with law.

"IT IS SO ORDERED."[3]

Not satisfied with the judgment, the accused appealed to this Court.

Before filing his brief, the accused-appellant filed before this Court, an urgent motion to suspend the proceedings of the case on the ground of a pending application for amnesty filed by him, under P.D. No. 206 with the Fifth Amnesty Commission, stationed in Dipolog City.[4] This Court, however, required the appellant to file his brief without prejudice to whatever action the appellant might take after the final resolution of his application for amnesty.[5]

The People's version of the facts is as follows:

"At about 6:30 o'clock in the evening of July 12, 1972, Taricon Ringuit left his house in barrio Lanawan, Municipality of Salug, Zamboanga del Norte, together with his wife, Miriam Ringuit, his nephew, Madjid Ringuit, his brother, Misal Ringuit, and one Madji Ansaw to catch fish and gather river shells for their supper in a nearby river with the use of a petromax light. (tsn, pp. 15-16, 22, 23, 25, Oct. 26, 1972). After gathering enough shells, they decided to return home around 8:00 o'clock in the evening. (tsn, p. 23, Oct. 26, 1972). Upon their arrival thirty minutes later, Taricon Ringuit, with the petromax light on hand, proceeded to ascend the backstairs of his house leading to the kitchen followed behind by his nephew Madjid Ringuit. (tsn, pp. 16-18, 20, 23, Oct. 26, 1972). As Taricon was about to climb the third step of the stairs with Madjid still on the ground behind him, Taricon saw accused Crisostomo Paculba sitting under the house below the kitchen floor holding a long gun which was pointed at them. (tsn, p. 18, Oct. 26, 1972). Suddenly, the accused fired a shot, hitting Madjid Ringuit at the base of the neck and killing him, instantaneously. (Id). After the shooting, the accused and his unidentified companion ran away (tsn, p. 19, Oct. 26, 1972). Taricon Ringuit was also wounded on his right leg and tried to go after the assailant but could not do so because of his injury. (tsn, pp. 18-19, Oct. 26, 1972). Misal Ringuit, who was still in the yard of the house about to take the front stairs leading to the porch, upon witnessing the shooting, immediately ran to the fallen Madjid Ringuit and held him

with his two hands and, together with his brother Taricon, brought the victim upstairs. (tsn, pp. 23-24, Oct. 26, 1972). Meanwhile, Nicanor Lantao, a municipal clerk of Salug and a neighbor of the Ringuits, upon hearing a gun report followed by screams coming from their house, repaired thereto. Upon seeing Madjid Ringuit wounded on the leg, Lantao requested the barrio captain who was with him to report the matter to the local police authorities. Shortly thereafter, the Municipal Mayor, the Chief of Police and several policemen and PC soldiers, arrived at the scene of the crime. (tsn, pp. 31-32, Dec. 19, 1972). After conducting an on-the-spot investigation of the incident, the peace officers proceeded to the house of the accused some 300 meters away from the house of the deceased and inquired from him if he owned any firearm. The accused pointed to two home-made guns, one of which was taken by the peace officers together with three bullets. (tsn, pp. 20-27, 29, 32, May 7, 1973). Crisostomo Paculba was forthwith arrested and brought to the municipal building of Salug where he was investigated by the Chief of Police of Salug. His statements given during the investigation were reduced into writing and signed by the accused. (Exh. G, pp. 4-5, rec.).

"Rural Health Officer Dr. Carmencita Pangasinan conducted a post-mortem examination of the deceased and found a 'gunshot wound about 5" deep by 1" diameter located at the supra sternal area directing dorsally.' Cause of death was severe internal hemorrhage secondary to gunshot wound (Exh. A, p. 6, rec.). A slug was recovered from the body of the victim. She also physically examined and treated Taricon Ringuit of a gunshot wound about 4" deep located at the medical aspect of the right leg. A slug was also re-covered from his injured leg. (tsn, pp. 5-6, Oct. 26, 1972).

"The left and right hands of the accused and Taricon Ringuit were likewise subjected to paraffin tests, by NBI Senior Chemist Renato G. Mababa. The paraffin cast taken of the left hand of the accused showed positive results of the presence of nitrates, while those taken of the hands of Taricon Ringuit yielded negative results. (Exhs. C & F, pp. 57, 58, rec.; tsn, pp. 40, 44-45, Feb. 6, 1973)."[6]

The appellant's defense is an alibi. He denied that he committed the offense complained of and assailed the trial court for convicting him of the charge based upon the evidence of the prosecution which is weak, insufficient, incompetent and inconclusive. His testimony is summarized by the trial court, as follows:

"On July 12, 1972, he was the whole day plowing the land of his mother at Lanawan, Salug, Zamboanga del Norte. After his work at about 6:00 o'clock in the afternoon, he proceeded to the house of his father-in-law at Liguac, Salug, where he and his family transferred sometime ago, arriving thereat at 7:00 o'clock that evening. He took his supper alone because his wife ate ahead of him. At about 8:00 o'clock the same evening, he heard two gun reports at an interval of 30 minutes coming from the direction of the house of the Ringuit family. He did not mind what he heard. At about 12:00 o'clock midnight, he was awakened by the arrival of a PC soldier and some Salug policemen who inquired from him whether he has a pistol. He admitted that he owns two homemade shotguns (pali-untod), one of which was owned by his brother-in-law, which they purchased from a certain subano for the purpose of self-protection. The two homemade shotgun were taken by the peace officers and the accused was forthwith arrested and brought to the municipal building of Salug, Zamboanga del Norte. Upon his inquiry, he was told that he was a suspect of having shot Madjid Ringuit and Taricon Ringuit. He was investigated by the Chief of Police of Salug. The investigation was re-duced to writing and signed by him. (Exh. "G", Crim. Case No. S-122).

"He claims that he never had any misunder-standing with the Ringuit family. They were friends since childhood"[7]

The appellant presented his wife, Regina Banglus, Anatolio Ortiz and his mother Anastacia Paculba to corroborate his testimony:

"Corroborating his theory, his wife, Regina Banglus, testified that her husband (Crisostomo), who was out the whole day of July 12, 1972, arrived from the farm at about 7:00 o'clock in the evening. After taking his supper alone, they slept together and he (Crisostomo) never left the house that evening. At about 12:00 o'clock

midnight, the policemen arrived and arrested her husband who was brought to the municipal building of Salug. Upon her inquiry from the policemen why her husband was being arrested, she was informed that her husband was the one who shot the muslims. She could not believe that Crisostomo did it because he was with her in the house of her father at Liguac, some 300 meters away from the scene of the crime. She, however, admitted having heard two (2) gun reports that evening.

"To further reinforce his defense, the accused presented Anatalio Ortiz who declared that in the evening of July 12, 1972, at about 8:00 o'clock, he heard two (2) gun reports coming from the direction of the house of the Ringuit family. The two gun reports had an interval of 30 minutes. He personally knows that the accused and the deceased never had any misunderstanding prior to the incident. Their relationship was harmonious.

"Anastacia Paculba, mother of the accused Crisostomo, also declared that in the evening of July 12, 1972 she heard two (2) gun reports at an interval of 30 minutes each coming from the direction of the house of the Ringuit family. The following morning, when she went to the municipal building of Salug to pay her taxes, she was informed that her son was in jail. She corroborated the story of her son."[8]

We find no merit in the appeal. The question raised by the appellant involves the credibility of witnesses and it is a settled rule that when the question raised refers to the credibility of witnesses, this Court will not disturb the findings of the lower court unless there is a clear proof of misappreciation of evidence.[9] Such is not the case at bar. The inconsistencies in the testimony of Taricon and Misal, witnesses for the prosecution, pointed out by the appellant in his brief refer to minor details and do not affect their credibility.[10] On the other hand, such inconsistencies are badges of truth for only the testimony of rehearsed witnesses will tally on every point. Also, the inconsistencies in the affidavit of Taricon and his testimony in open court do not render his testimony incredible. It has been ruled that affidavits as species of evidence usually suffer from infirmities, as shown by judicial experience.[11]

The defense of alibi cannot be given full faith and credit since the appellant had been positively identified[12] as the one who fired the shot that killed the deceased Madjid Ringuit and wounded Taricon Ringuit. The prosecution witnesses could not have been mistaken in their identity as the place was illuminated by the petromax lamp carried by Taricon Ringuit and the appellant was well known to them. Besides, for an alibi to prosper, it is not enough to prove that the appellant was somewhere else when the crime was committed, but he must, likewise, demonstrate that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[13] In the instant case, the appellant was allegedly in the house of his father-in-law at the time the crime was committed. The said house, however, is only 300 meters away from the house of the deceased so that it was not physically impossible for the appellant to be at the scene of the crime when it was committed.

Moreover, the appellant had not shown any reason why the witnesses for the prosecution would testify against him and implicate him in the commission of a grave felony unless the appellant is really guilty thereof. Witnesses for both the prosecution and the defense testified that there was never any misunderstanding between the victims and the appellant and their relationship was harmonious.

Furthermore, the act of appellant in filing an application for amnesty under P.D. No 206 with the Fifth Amnesty Commission constitutes an implied admission of guilt. This Court has ruled that amnesty presupposes the commission of a crime, and when an accused maintains that he has not committed a crime, he cannot have any use for amnesty. The invocation of amnesty is in the nature of a plea of confession which means that the pleader admits the allegations against him.[14]

The crime committed is qualified by treachery, in that appellant armed with a shotgun suddenly fired a shot at his unarmed victims at close range as the victims were just about to ascend the stair, taking the victims by surprise and leaving them with no means to defend themselves.[15]

Evident premeditation, however, cannot be appreciated because of the absence of proof that the appellant had planned the killing of the deceased and had coolly reflected upon its commission. For evident premeditation to be appreciated, it must be shown that the accused premeditated the killing; that he clung to his premeditated act; and that there was sufficient interval of time between the premeditation and the execution of the crime to allow him to reflect upon the consequences of his act.[16]

The single shot from a shotgun that appellant aimed at the victims resulted in the death of Madjid Ringuit and the infliction of mortal wounds on Taricon Ringuit which would have caused his death were it not for timely medical assistance.

The crime committed is a complex crime of Murder with Frustrated Murder since the death of Madjid Ringuit and the wounding of Taricon Ringuit arose out of the single act of the appellant in firing a shot.[17] Consequently, only one penalty should be imposed upon the accused. The indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as maximum, imposed upon the accused for the frustrated murder of Taricon Ringuit (Crim. Case No. S-123) should be, accordingly, eliminated.

Under Art. 48 of the Revised Penal Code, the penalty to be imposed upon the accused in a complex crime shall be that for the most serious crime, which is Murder in this case, the same to be applied in its maximum period or Death. However, for lack of the necessary votes, the penalty of reclusion perpetua is hereby imposed upon the appellant.

WHEREFORE, the judgment appealed from should be, as it is hereby MODIFIED, and the accused Crisostomo Paculba is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased, Madjid Ringuit, in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Guerrero, and Escolin, JJ., concur.

Abad Santos, J., on official leave.

De Castro, J., on sick leave.

[1] Rollo, p. 3.

[2] Id., p. 4.

[3] Id., p. 21.

[4] Id., pp. 27-28.

[5] Id., p. 40.

[6] Id., p. 73.

[7] Id., pp. 16-17.

[8] Id., pp. 17-18.

[9] People vs. Binsol, et al., 100 Phil. 713; People vs. Jardiniano, et al., No. L-37191, March 30, 1981, 103 SCRA 530.

[10] People vs. Palencia, et al., L-38957, April 30, 1976, 71 SCRA 679; People vs. Abrogar, et al., No. L-24310, October 19, 1976, 73 SCRA 466.

[11] People vs. Flores, et al., L-17077, April 29, 1968, 23 SCRA 309; People vs. Timbang, et al., 74 Phil. 295.

[12] People vs. Arpon, et al., 100 Phil. 765.

[13] People vs. Divinagracia, 105 Phil. 281.

[14] People vs. Llaneta, et al., 86 Phil. 219.

[15] People vs. Aleta, G.R. No. L-40694, Aug. 31, 1976, 72 SCRA 542.

[16] People vs. Corpus, 107 Phil. 44.

[17] Art. 48, Revised Penal Code.

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