

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO ESTERA ALIAS RUBEN, ACCUSED-APPELLANT.*G.R. No. 101556. March 31, 1992*

Ponente: MELENCIO-HERRERA, J.

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A case certified to this Court for review by the Court of Appeals [1] by reason of the penalty of reclusion perpetua which it seeks to impose on the accused, Roberto Estera alias Ruben, for the crime of Murder, thereby modifying the indeterminate sentence meted out by the Regional Trial Court (RTC) of Catbalogan, Samar, Branch 27.[2]

It was in Barangay Rama, Catbalogan, Samar, where Uldarico Bulan (the victim) and his family lived. They occupied a house on the western side of a barangay street running from north to south. Adjacent to the Bulan house, on the northern side, was the house of Margarito Avila. The Avila house was only a meter away from the Bulan house. To the north of the Avila house, about 1-1/2 meters away, was the house owned by the spouses Francisco and Josenia Sidon. The latter was Uldarico Bulan's daughter.

On 13 January 1984, accused-appellant and his family took a boat from Catbalogan City to Barangay Rama, Catbalogan, Samar. Accused-appellant, who was at that time a member of the CHDF, assigned as escort and part of the security force protecting Mayor Raul Muñoz, was going to Barangay Rama, to serve as the Mayor's "advance party." His wife, Pacita Avila, and children went along because the former was a native of the place, which was celebrating its barangay fiesta the following day. As part of the Mayor's security contingent, Estera was issued a baby Armalite, an M16 rifle, caliber 5.56 mm., with Serial No. R.P. 127200, and sixty (60) rounds of ammunition, by the local Military Police Brigade.

At around 5 o'clock in the afternoon, accused-appellant, together with his wife and children, arrived at their destination. They immediately went to the house of Margarita Avila, Pacita's father.

The prosecution witnesses narrated the circumstances surrounding the commission of the crime as follows: Upon arrival at Barangay Rama, the accused-appellant, together with some others, had a drinking spree. At around 7 o'clock in the evening of the same date, a gunshot was heard. It came from the direction of the Avila house. The victim, Uldarico Bulan, who was then inside his house, heard the gunshot and shouted towards the Avila house, admonishing them not to fire any more shots, as someone (referring to his daughter Josenia, living in the house adjacent to the Avila house) had just given birth four (4) days earlier. Nobody in the Avila house responded, and no gunshot was fired again. However, an hour later, another gunshot was heard, this time near the Bulan's "banggerahan." The "banggerahan" was made of bamboo, with slats in between, making it possible to see outdoors, beyond the house itself. Immediately after hearing the gunshot, Helen Bulan, a daughter of Uldarico who was inside the house with the latter, peered outside and saw the accused-appellant, carrying an M16 rifle, in assault position. Meanwhile, she heard her father, who was about to approach the drinking jar in the "banggerahan" shout: "You son of a bitch, Ruben, why did you shoot me when I have no fault" (TSN, 10 June 1985, p. 11). Then, Helen saw accused-appellant fire a volley of shots once more. When she looked at her father,

he was already lying on the floor. Helen and her mother Gliceria lifted the fallen Uldarico, and he told them: "You stand for it, because it was Ruben Estera who shot me" (TSN, 10 June 1984, p. 14). Five minutes later, Uldarico died.

During all the commotion, Josenia Sidon was inside her house. After the rapid succession of gunshots, Josenia immediately opened the door of her house, and she saw accused-appellant, wearing a green, military-type "poncho" raincoat, coming from her father's house, holding a rifle in a port-arm position, running northbound on the barangay street. When the accused-appellant reached the Barangay Reading Center, he again fired his M16 rifle twice.

Meanwhile, Helen and her mother, with the help of some neighbors, prepared the body of the deceased for the wake in their house. There were several people who came. At around 10 o'clock in the evening, accused-appellant, still carrying his firearm, went inside the Bulan house, and uttered the following remarks: "You might say I was the one who shot him as I am the only person who had a firearm" (TSN, 10 June 1985, p. 15). He then went out of the house, to drink with the men folk, who had, by then, gathered for the wake.

The defense witnesses presented their own version thus: When the boat going to barangay Rama was about to reach its destination, accused-appellant fired two shots into the air to test if the rifle he borrowed was functioning properly. When they arrived at the Avila house, accused-appellant was already dizzy, as he had been drinking rum during the trip. He rested on a mat which his wife had prepared for him. He placed the rifle on the floor beside him, and the bullets under his pillow. Accused-appellant fell asleep, only to be awakened by his wife at around 8 o'clock in the evening. The latter had heard gunshots coming from the direction of the Bulan house. Upon awakening, accused-appellant heard a single gunshot, which he estimated to have come from the Reading Center. He commanded everyone in the house to lie flat on the kitchen floor. Then, he grabbed the rifle and loaded it with ammunition. They did not move until 45 minutes had passed. Then, seeing that there were people outside, accused-appellant went out of the house, and sat on the rung of its staircase. As he sat there, he noticed that there was silence in the Bulan household. Just then, he saw Francisco Sidon, Josenia's husband, walking on the barangay street, homeward-bound. Accused-appellant asked Sidon what had happened, but the latter did not know. Accused-appellant looked towards the Bulan house, and he saw that many people had gathered around it. Out of curiosity, he looked inside the house through the main door and saw Uldarico Bulan dead. Accused-appellant gathered his family, and took them to the house of his sister-in-law, as his wife was very scared of all the shooting that had transpired. Then he went back to the Bulan house, and seeing the body of the deceased still on the floor, he asked some people to lift it and place it on the table. After this, he and some friends stayed on to keep vigil. After some time, he left the Bulan house. That night, he slept at the house of his sister-in-law, together with his family. He woke up at 6 o'clock the following morning (15 January 1984), and helped the police who were investigating the crime committed the day before.

At 10 o'clock in the morning of 15 January 1984, Mayor Muñoz arrived at Barangay Rama. Accused-appellant, together with some others, escorted him around the barangay. At about 3 o'clock in the afternoon, the Mayor and his party (including accused-appellant) left for Bagoñgon. According to accused-appellant, the entire party of the Mayor spent the night in Bagongon, and on 16 January 1984, left for Mombon, where they stayed for two hours. After Mombon, they proceeded to Cagutsan, where they stayed for two hours also. Then they all returned to Catbalogan City. On this same date, accused-appellant returned the firearm he had borrowed, to the Supply Officer of the Military Police Brigade. He also returned the 58 rounds of ammunition left, after having fired two rounds to test the rifle.

Defense witness, Lucretio Lomuardo, testified that at 8 o'clock in the evening of 13 January 1984, he was at the Reading Center of the barangay. He saw a man wearing a military raincoat with a hood covering his head, pass

by. After a while, he heard a volley of gunfire, and then saw the man in the raincoat pass by again. This time, the hood was off the man's head. He fired the weapon once more, near the Reading Center. On direct examination said witness testified that he saw the man's face, and that the man was not the accused-appellant. However, upon cross examination, the witness testified that since it was very dark that evening, and there was no light outside the Reading Center, he could not make out the appearance of the person wearing the raincoat, (TSN, 20 January 1987, p. 58).

The records show that Gliceria Bulan and her children took the body of the deceased to Catbalogan City for autopsy on 14 January 1984. The autopsy revealed that the deceased sustained nine gunshot wounds, three of which were fatal. The cause of death was described as "cardiorespiratory arrest from multiple gunshot wounds". From an examination of the entry and exit wounds, the examining physician concluded that eight (8) of the wounds were inflicted from behind the victim, while one (1) was sustained by the victim while the assailant was either in front or behind him.

The crime was reported to the police, and that same day, several policemen were dispatched to Barangay Rama, to conduct the necessary investigations. Six empty shells of an M16 rifle were found at the scene of the crime: four in the "banggerahan" and two outside the house, below the "banggerahan." The two empty shells found outside the house were recovered by the accused-appellant himself, who was present at the crime scene during the investigations conducted by the police. The six empty shells (or specimen shells) were then turned over to the Tacloban City crime laboratory for the purpose of determining whether they were all fired from one and the same firearm. Six (6) bullets were also test-fired from the same armalite for purposes of laboratory comparison of the test shells with the specimen shells.

The ballistic examination revealed that the empty (specimen) shells recovered from the crime scene, showed the same individual characteristics as the test shells fired from the armalite rifle issued to accused-appellant and that the empty shells were all fired from the same baby Armalite of accused-appellant.

In his Brief filed with the Court of Appeals, accused-appellant faults the Trial Court with disregarding his defense of alibi and finding him guilty of Murder beyond reasonable doubt.

As the Appellate Court has pronounced, the evidence on hand disproves the foregoing assertions.

Accused-appellant's defense of alibi was properly rejected. Aside from the accepted tenet that alibi is one of the weakest of defenses, easily susceptible of concoction, and is invariably viewed with suspicion, it may be considered only when established by positive, clear and satisfactory evidence (People of the Philippines v. Marayo, L-4800, 9 May 1953). Not only is this evidence wanting. Prosecution eyewitnesses Helen Bulan and Josenia Sidon testified that the accused-appellant was present at the scene of the crime. And more than that, Helen positively identified him to be the gunman who shot the deceased.

The utterances of the deceased immediately prior to his death also deserve admission and appreciation. His wife and daughter, seeing him lying on the floor with several gunshot wounds, lifted him, and as they did so, he uttered: "You stand for it because it was Ruben Esters who shot me" (TSN, 10 June 1985, p. 14). Five minutes after he said these words, he expired. This declaration has all the vestiges of a dying declaration and even if not, there can be no question about its admissibility as part of the res gestae (People of the Philippines v. Baguio, G. R. No. 76585, 30 April 1991, 196 SCRA 459).

As this Court has articulated, the defense of alibi is certainly unavailing where there is affirmative evidence of the presence of the accused at the scene of the crime at the time of its commission, if not his positive identification as the perpetrator of the offense, as well as where there is an ante mortem statement of the victim received in

evidence either as a dying declaration or as part of the *res gestae* (*People of the Philippines v. Baguio*, *supra*).

Other factors besides point to accused-appellant's penal accountability. He was the only individual with a heavy firearm on the date the killing was perpetrated. What is more telling is that the ballistic examination revealed that all empty shells recovered at the crime site had been fired from the same M16 armalite rifle which accused-appellant had in his possession. The same weapon was returned only on 16 January 1984, or three (3) days after the incident. As a matter of fact, accused-appellant admitted to the bereaved family that he was the only one with a firearm, when he went to the Bulan residence at 10 o'clock in the evening of 13 January 1984, or barely two (2) hours after the killing, to keep vigil over the deceased when he said: "You might say I was the one who shot him as I am the only person who had a firearm." He, too, had a motive for wanting to do away with the deceased. The latter had the temerity to shout towards the direction of the Avila house where the first shot came from, to desist from firing. And again, upon hearing the gun report from near their "banggerahan," the victim uttered the following statement: "You son of a bitch Ruben, why did you shoot me when I have no fault." This statement obviously added fuel to accused-appellant's anger.

The only exhibit offered by the defense was a xerox copy of entries of the police blotter of the Catbalogan City Police dated 13 January 1984, particularly entry No. 80, which was a report made to the police by Helen Bulan, to the effect that her father had been shot by "unidentified men." While there is a presumption of regularity in the performance of official duties on the part of policemen when they enter data in the police blotter, that is disputable and can be overcome by the existence of facts from which the Courts can determine the truth of the matters in issue. In the case at bar, prosecution witness Helen Bulan herself positively identified accused-appellant as the assailant and from the circumstances surrounding the criminal act we have no reason to doubt her credibility. So categorical was her statement to this effect.

"Q. Now, after your father uttered the remarks which had already been placed on record, what transpired next?

"A. I heard several shots.

"Q. Where did you hear these several shots?

"A. From our wash stand.

"Q. Did you come to know who was the person who fired the successive shots?

"A. Yes, sir.

"Q. Why was that person who fired the several shots?

"A. Ruben Estera.

"Q. Why do you say that it was Ruben Estera who fired the successive shots?

"A. Because I saw him." (TSN, 10 June 1985, pp. 11-15; emphasis ours).

Moreover, as she also testified, she was not with her mother when the latter was investigated by the police.

"Q. When your mother was being investigated by the police officer in the barracks, you did not volunteer to the police to give the information that you actually saw Ruben Estera killed (sic) your father, is that right?

"A. Because I was not with my mother in coming to Catbalogan, I was left behind in the house." (TSN, March 20, 1986, pp. 20-22; underlining supplied).

Besides, there was actually no way of verifying the accuracy of Helen Bulan's alleged disclosure to the police since the defense decided to "dispense with the testimony of the station commander."

The Court concludes, therefore, that accused-appellant's guilt has been proved beyond reasonable doubt. The crime is Murder undoubtedly qualified as it is by treachery. The modification by the Court of Appeals of the penalty from the indeterminate sentence imposed by the Trial Court of a minimum of twelve (12) years and one (1) day of reclusion temporal, to a maximum of eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, to reclusion perpetua, is likewise in order. The generic aggravating circumstance of dwelling is off-set by the mitigating circumstance of intoxication so that the penalty imposable would be the medium period of the penalty fixed by law or reclusion perpetua.[3]

WHEREFORE, the judgment of conviction is **AFFIRMED** and the accused-appellant, Roberto Estera alias Ruben, is hereby sentenced to reclusion perpetua and to indemnify the heirs of Uldarico Bulan in the amount of P50,000.00.

Costs against accused-appellant.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Seventh Division composed of Justices Serafin E. Camilon, Chairman, Celso L. Magsino, Member, and Artemon D. Luna, Ponente.

[2] Judge Sinfioriano A. Monsanto, presiding.

[3] Pursuant to the majority opinion in *People v. Muñoz*, G. R. Nos. 38969-70, February 9, 1989, 170 SCRA 107, 120-125, with the ponente herein dissenting.

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