

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTHUR BUNDANG, CELINO RAMOS, AND JUANITO BIBAT ALIAS EDRING, ACCUSED. ARTHUR BUNDANG, ACCUSED-APPELLANT.

G.R. No. 101830. May 27, 1997

Ponente: VITUG, J.

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VITUG, J.:

Arthur Bundang was accused, along with Celino Ramos and Juanito Bibat, of murder and double frustrated murder, with the use of an unlicensed firearm, in an information that read:

"That on or about the evening of September 24, 1986 at Agbannawag, Tabuk, Kalinga-Apayao and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously with treachery, evident pre-meditation and taking advantage of nighttime, with deliberate intent to take the lives of the victims and with the use of an unlicensed firearm, and on the same occasion shoot at the victims, hitting Tommy Lardizabal and killing him and inflicting mortal gun shot wounds upon Jacqueline Palafox and Janolino Palafox as per medical certificate as follows:

"1. Jacqueline Palafox - gunshot wound, hip, right with fracture cervicotrochanteric femur, right open Type IV;

"2. Janolino Palafox - Fracture, second metacarpal base, comminuted, fracture capitate wrist (L) open; gunshot wound through and through, point of entrance wrist dorsum, point of exit wrist volar aspect.

"having performed all the acts of execution which would have produced the crime of murder but did not by reason of a cause independent of the will of the accused, namely the timely medical assistance extended said victims which prevented their death.

"CONTRARY TO LAW."[1]

Bundang was arrested and committed to jail on 09 October 1987.[2] His two co-accused, Ramos and Bibat, remained at large.[3] When arraigned, Bundang pleaded not guilty to the charges.

Here following, according to the prosecution, were the events that led to the filing of the information.

At twilight, on 24 September 1986, Romeo Cuaresma and Tommy Lardizabal went to the PC detachment in Agbannawag, Tabuk, Kalinga-Apayao, to switch on the camp spotlight. On their way, they saw, from a distance of a few meters away, Bundang, Bibat and Ramos, seated on separate benches outside an uninhabited house. They were on a drinking spree. Bundang, who was obliquely facing the road, was holding an armalite. On the way back from the detachment, Romeo and Tommy again passed by the trio who were still partaking of drinks.[4]

A few hours later, at around 7:30 in the evening, Tommy was in the company of Janolino Palafox, a farmer and ex-policeman, the latter's five-year-old daughter Jacqueline and his son, walking along the barangay road in Agbannawag on their way home from a store. Suddenly, the group was shot at. Tommy was hit, and he died on

the spot. Jacqueline took a bullet at the buttocks while Palafox was wounded on the left wrist.[5] Palafox was lying prone on the ground when Bundang, holding an M-16 firearm, closed in. Bundang kicked and pushed with his left foot Palafox, forcing the latter to turn over and roll.[6] Bibat and Ramos, passing by Palafox, followed Bundang upstream.[7] Palafox recognized appellant by the light coming from the spotlight at the PC detachment and the light coming from nearby houses.[8] Palafox told his wife and his other relatives, who rushed in to help, that appellant was responsible for the shooting.[9]

Romeo Cuaresma, Palafox's cousin, was having supper at home with his family and Sgt. Henry Ranjo, when they heard the sound of "rapid (gun)fire." [10] All of them deployed for safety inside the house which was just around fifteen (15) meters away from the source of the gunfire. Crawling out later, they saw Tommy lying prostrate. Palafox told Cuaresma that it was appellant who had shot Tommy.[11] Cuaresma helped carry Tommy's body to the Cuaresma residence nearby. Sgt. Ranjo assisted in bringing Palafox and his daughter to the provincial hospital. According to Cuaresma, appellant had suspected that Palafox and his relatives were responsible for the killing of appellant's cousin, Colas Portuguese,[12] some time ago.

T/Sgt. Jose Andrada was the "sergeant of the guard" at Camp Juan M. Duyan in Bulanao, Tabuk, Kalinga-Apayao, that fateful night when Antonio Cuaresma reported the shooting incident. Andrada went with Cuaresma to the hospital. When Andrada asked Palafox who shot him, Palafox replied that it was appellant. Andrada advised Palafox to file a complaint but the latter said that he would "take charge" of his own revenge. The following morning, Andrada returned to the hospital and once again tried to convince Palafox to file a complaint but Palafox was adamant against allowing the law to take its own course. Palafox's relatives, including his wife, his uncle, Antonio Cuaresma, and his aunt and the mother of Tommy, Rosita Lardizabal, told Andrada that they would abide by the decision of Palafox.[13]

Aside from the death of Tommy Lardizabal, who held a degree in Commerce,[14] the incident left five-year-old Jacqueline with serious wounds.[15] Palafox's injury took more than a month to heal.[16]

Appellant disappeared for three days. On the third day, he returned to Agbannawag only to dismantle his house and to load it on a truck.[17] When Palafox's injury had healed, he started looking for appellant. His long search brought him to various towns and to nearby Isabela province. Unsuccessful, he finally gave up the search. He by then had also realized that taking personal revenge was not the answer to the family misfortune. Palafox decided to let the authorities handle the matter.[18]

In August 1987, M/Sgt. Hover Coyoy received a mission order from Maj. Amante Bersamin, Assistant Provincial Commander, to recover the firearm issued to the late ICHDF Agapito Abiyado. The firearm was believed to be in the possession of appellant. In the company of four constables in civilian clothes, Sgt. Coyoy found appellant in a secluded spot in the mountainous part of Cordon, Isabela, about a kilometer away from the highway. There were four huts in the area, and one belonged to appellant and his family. Appellant was brought to the Cordon police station where he was identified by Palafox to be the culprit in the Agbannawag incident. Although appellant denied the accusation, he, nevertheless, agreed to be taken to Tabuk.[19]

On 10 August 1987, Palafox, Romeo Cuaresma and Rosita Lardizabal executed sworn statements[20] before M/Sgt. Coyoy of the 114th PC Company in Camp Juan M. Duyan, Tabuk, which led to the filing of the information aforequoted.

The defense interposed alibi and denial.

According to appellant, on 24 September 1986, he was in the ranch of Bunao, at the boundary of Agbannawag and Isabela, where he worked as a ranch boy. Claiming that he had no personal grudge against Palafox, he insisted

that he stayed in Agbannawag after the incident and transferred to Cordon only in December 1986. He said that when he met Palafox while he was still in Agbannawag, Palafox never once confronted him about the incident. Appellant argued that the assailant could not have been recognized by Palafox because the light coming from the Palafox and Cuaresma residences, as well as the spotlight from the PC detachment, could not have illuminated the crime scene well enough.[21] Antonio Mejia, the barangay secretary when the crime happened, sought to corroborate appellant. Mejia stated that the houses in the area were about 70 to 80 meters away and the PC detachment was even farther at 300 meters. The area, he said, was too dark to allow any identification at night.[22]

On 25 June 1991, the Regional Trial Court of Kalinga-Apayao, Branch 25, at Tabuk,[23] rendered a decision disposing of Criminal Case No. 34-87, as follows:

"WHEREFORE, judgment is hereby rendered finding the accused ARTHUR BUNDANG guilty beyond any reasonable doubt as principal of the crime MURDER, sentencing the accused Arthur Bundang to suffer the penalty of Reclusion Perpetua, with the accessory penalties provided for by law and to indemnify the heirs of Tommy Lardizabal, the sum of FIFTY THOUSAND (P50,000.00) PESOS without subsidiary imprisonment in case of insolvency pursuant to Article 39, Revised Penal Code as amended by Republic Act No. 5465.

"2. For the shooting of Jacqueline Palafox, the Court hereby sentences the accused Arthur Bundang, of the crime Frustrated Murder to suffer an indeterminate penalty of Six (6) Years and One (1) Day of Prision Mayor as minimum to Ten (10) Years of Prision Mayor as maximum, with the accessory penalties provided for by law and to indemnify Jacqueline Palafox the sum of TWENTY THOUSAND (P20,000.00) PESOS without subsidiary imprisonment in case of insolvency;

"3. For the shooting of Janolino Palafox, the Court hereby finds the accused Arthur Bundang guilty beyond reasonable doubt as principal of the crime of Frustrated Murder and sentences said accused to suffer an indeterminate penalty of Six (6) Years and One (1) Day of Prision Mayor as minimum to Ten (10) Years of Prision Mayor as maximum, with the accessory penalties provided for by law and to indemnify Janolino Palafox the sum of TWENTY THOUSAND (P20,000.00) PESOS without subsidiary imprisonment in case of insolvency pursuant to Article 39 Revised Penal Code as amended by Republic Act No. 5465.

"The detention of the accused Arthur Bundang, starting from October 9, 1987 to the present shall be deducted from the penalty imposed by the Court in the service of his sentence pursuant to Article 29 Revised Penal Code as amended by Rep. Act No. 6127.

"Upon the finality of this judgment, the Clerk of Court is hereby ordered to issue the final commitment of the accused Arthur Bundang, to serve sentence.

"Cost de oficio.

"SO ORDERED." [24]

In his appeal, appellant Bundang assails the trial court in giving too much credence to Palafox's testimony which he asseverates to be "improbable and contrary to ordinary human experience (and) behavior." [25]

Assessing the credibility of witnesses is aptly within the province of the trial court and its judgment deserves highest respect. Repeatedly, this Court has pronounced that in the absence of proof of some fact or circumstance of weight and influence that might have been overlooked, or its significance misinterpreted, by the trial court which, if properly considered, could affect the result of the case, the trial court's assessment is almost invariably viewed by an appellate court with finality.[26] It should so be as it is the trial court that has the direct opportunity to closely monitor the proceedings and observe the deportment of witnesses during the stage of examination.

There is no cogent reason in this particular case to deviate from the rule. Appellant claims that the crime scene is

not "adequately illuminated x x x to provide vision to the events taking place therein." [27] The record points to the contrary.

At the ocular inspection ordered by the trial court, it was established that the crime scene was only 206 meters from the PC detachment, 73 meters from the house of Palafox and 25 meters from the Cuaresma residence. [28] According to Romeo Cuaresma, the PC detachment was illuminated by two spotlights of 1,000 watts each - one directed to the north, which was where the crime transpired, and another directed to the south. The spotlights were mounted about 15 feet from the ground. [29] Defense witness Mejia admitted the existence of this "bright light x x x on top of the roof of the detachment" [30] or a light "round in form" which appeared "like the cover of a bed pan (arinola)." [31] There was also a 40-watt fluorescent lamp at the back of the house of Palafox which was facing the west where the crime occurred, [32] and a fluorescent bulb illuminated the Cuaresma residence. [33]

Where the condition of visibility is favorable, and the witnesses do not appear to be biased against the accused, assertions by them on the identity of the malefactor should be accepted. [34] Palafox, it would in fact appear, had a good look at appellant. On cross-examination, Palafox testified:

"Q. How can you be sure that the gun used was an armalite M16 and not an armalite M14.

"A. That is what I have seen, sir, he was holding an armalite M16.

"Q. Alrigh[t], what was the distance from you to the accused Arthur Bundang when he was holding that gun?

"A. May be that was less than a meter because he came near me and he even kicked me with his foot and I was turned over.

"Q. And that was the only time you saw this Arthur Bundang holding the armalite, is that correct, Mr. Witness?

"A. Yes, sir, because that was the only time he came to kick me with his foot.

"Q. And at that time you stated in your sworn statement that you were playing possum, is that correct?

"A. Yes, sir.

"Q. As a matter of fact you were in a prone position, lying flat on your stomach touching the ground when he came to kick you, is that also correct.

"A. Yes, I was lying prone to the ground when he came to kick me and I was even turned over, sir.

"Q. And when you were playing possum, is it not a fact that you had to close your eyes in order not to be mistaken as alive? Please answer the question, Mr. Witness.

"A. Yes, sir, I played possum.

"Q. And then you closed your eyes because as you said you [were] playing possum, is that what you want to impress the Honorable Court.

"A. When he kicked me with his foot causing me to turn over of course my eyes were opened.

"Q. And when you were turned over you opened your eyes, is that correct?

"A. Yes, sir.

"Q. Did it not occur to you, Mr. Witness, that when you opened your eyes the accused Arthur Bundang might see that you are alive and further shoot you.

"PROV'L FISCAL:

"Objection, Your Honor. We all know for a fact that there are also dead persons whose eyes are wide open.

"COURT:

"Sustained.

"A. When he might have detected that I was not moving anymore he left me." [35]

The defense has failed to convincingly ascribe any real ill-motive on the part of Palafox enough to truly make him fabricate such serious charges as those recited in the information against appellant.[36] Identification of the appellant could not have been difficult considering that Palafox had known him for about ten (10) years.[37] The fact that Palafox is related to both the deceased and the wounded child does not necessarily affect his credibility. A relative of the victim, indeed, has a natural knack in remembering the face of an assailant for he, more than anybody else, would be concerned with justice for the victims by the malefactor being brought to face the law.[38]

The delay in reporting the crime to the authorities would not be sufficient to discredit Palafox and his testimony. Such delay was fully explained by the prosecution. Palafox was decided for a while to personally exact revenge on the perpetrator of the offense. It was only later when he realized that taking the law into his hands was not the proper way to mete out justice.

Delay, even then, in revealing what a witness knows about a crime does not, by itself, render his testimony unworthy of belief [39] particularly when, such as here, he is related to the victim.[40]

The sole testimony of an eyewitness, if found convincing and trustworthy by the court, is sufficient to support a finding of guilt beyond reasonable doubt.[41] Alibi cannot prevail over the positive identification of the accused,[42] and a bare denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving and cannot be given an evidentiary weight greater than the testimony of witnesses who testify affirmatively. And between the positive declarations of the prosecution witness and the negative statements of the accused, the former ordinarily deserves more credence than the latter.[43]

The killing of Tommy Lardizabal was one of murder under Article 248 of the Revised Penal Code. Treachery attended the commission of the crime. This qualifying circumstance was present because the attack upon the unarmed deceased, who had not committed the slightest provocation and who was totally unaware of the murderous design of appellant, was swift and unexpected.[44]

Under Article 248, murder is penalized by reclusion temporal maximum to death. In the absence of any aggravating or mitigating circumstance, the proper imposable penalty is the medium period of the penalty or reclusion perpetua. The questioned incident has additionally caused injuries to Palafox and his daughter. There is no clear proof on the number of shots fired by appellant to cause those injuries, and all that the records show is that, according to witness Cuaresma, "rapid fire" has been heard. The incident must then be considered as having come from one criminal impulse which has caused three different results - the death of Tommy, the wounding of Jacqueline's hip and the wounding of Palafox's wrist. Accordingly, the provision of Article 48 of the Revised Penal Code, to the effect that when a single act constitutes two or more grave or less grave felonies the penalty for the most serious offense shall be imposed in its maximum period, should be applied. Appellant could have thus been meted the death penalty if it were not for the fact that the law reimposing the death penalty had not as yet at the time of commission been enacted.

WHEREFORE, appellant Arthur Bundang is hereby found guilty beyond reasonable doubt of the complex crime of murder with double frustrated murder for which he shall suffer the penalty of reclusion perpetua. He shall indemnify the heirs of Tommy Lardizabal in the amount of fifty thousand pesos (P50,000.00) and each of Janolino Palafox and Jacqueline Palafox in the amount of twenty thousand pesos (P20,000.00). Costs against appellant.

SO ORDERED.

Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

Padilla, (Chairman), J., on leave.

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- [1] Records, pp. 1-2.
- [2] Records, p. 15.
- [3] It is on record that appellant and one "Romeo Bibat" waived their right against illegal detention (Ibid., p. 9).
- [4] TSN, August 16, 1988, pp. 9-15.
- [5] TSN, April 7, 1988, pp. 3-7.
- [6] Ibid., pp. 8-9.
- [7] Ibid., pp. 21-22.
- [8] Ibid., p. 9.
- [9] Ibid., p. 11.
- [10] TSN, August 16, 1988, p. 4.
- [11] Ibid., pp. 4 & 9.
- [12] Ibid., pp. 16-18.
- [13] TSN, November 8, 1988, pp. 24-27.
- [14] TSN, November 9, 1988, p. 46.
- [15] TSN, April 7, 1988, pp. 5-6.
- [16] Ibid., pp. 12-13.
- [17] Ibid., p. 9.
- [18] Ibid., pp. 12-14.
- [19] TSN, November 9, 1988, pp. 35-42.
- [20] Records, pp. 6-8.
- [21] TSN, May 30, 1989, pp. 58-62.
- [22] TSN, March 27, 1990, pp. 22-25.
- [23] Presided by Judge Simplicio C. Cabantac.
- [24] Rollo, p. 28.
- [25] Appellant's Brief, p. 1.
- [26] *People vs. Laurente*, 255 SCRA 543; *People vs. Taneo*, 218 SCRA 494; *People vs. Camaddo*, 217 SCRA 162.
- [27] Rollo, p. 73.
- [28] Report on Ocular Inspection; Records, p. 226.
- [29] TSN, August 16, 1988, pp. 6-7 & 17.

[30] TSN, March 27, 1990, p. 27.

[31] Ibid., p. 29.

[32] TSN, August 16, 1988, pp. 7-8.

[33] TSN, April 7, 1988, p. 21.

[34] People vs. Jacolo, 216 SCRA 631; People vs. Pascua, 206 SCRA 628.

[35] TSN, May 7, 1988, pp. 15-17.

[36] People vs. Taneo, *supra*.

[37] TSN, April 7, 1988, p. 7.

[38] People vs. Escoto, 244 SCRA 87.

[39] People vs. Cabuang, 217 SCRA 675.

[40] People vs. Reoveros, 247 SCRA 628, citing People vs. Gamboa, 194 SCRA 372.

[41] People vs. Camat, 256 SCRA 52.

[42] People vs. Torrefiel, 256 SCRA 369.

[43] See People vs. Guibao, 217 SCRA 64.

[44] People vs. Abrenica, 252 SCRA 54.

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