

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. P/SGT. JOSE ARGUELLES, DEFENDANT-APPELLANT.

G.R. No. 102539. May 17, 1993

Ponente: NOCON, J.

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NOCON, J.:

There is no graphic example of police brutality and abuse of authority than in the case at bar where a lowly civilian for no reason at all was shot at the back by a supposed guardian of the law and protector of the people.

The facts of the case as presented by the prosecution show that on February 5, 1990, between 10:30 and 11 o'clock in the evening, while Ismael Mulaga was walking along Abanico Road in Puerto Princesa he suddenly heard a tricycle stop.[1] Instinctively he turned his head at the direction where the tricycle stopped and saw accused-appellant Jose Arguelles holding a short gun pointed to Bagamiel Gabuco on the left side of the road right behind him and uttering as follows: "Police ito, huwag kang tatakbo." [2] Immediately thereafter, Mulaga heard a gunshot and the man addressed to and who was behind him fell down.[3]

Fearing for his life Mulaga hurriedly walked fast towards the safety of his house.[4] The next day, he came to know that the person shot the night before was Bagamiel Gabuco.[5]

The defense however gave a different version of the story.

That at around 11 o'clock in the evening of February 5, 1990 when accused-appellant together with Pfc. Roberto Pamintuan arrived at the vicinity of Eduardo's Night Club situated at Barangay San Pedro, Puerto Princesa City, they were met by someone asking for assistance as a certain Magbanua was being mauled by one Bagamiel Gabuco.

At that instance, there was allegedly a commotion and they saw Bagamiel being chased by a certain Guzman. Accused-appellant being a police officer boarded a tricycle together with Pfc. Roberto Pamintuan to run after Bagamiel Gabuco. They turned left towards the direction of Penida Road and there they saw a person running. When about a few meters from him, accused-appellant shouted, "stop, we are policemen" which went unheeded until they overtook him. As accused-appellant was approaching the suspect to question him, the latter kicked the former which the appellant evaded by backing up and at the same time drawing his service gun to fire a warning shot but in so doing he lost his balance and the gun fired. Thereafter, accused-appellant saw the suspect, Bagamiel Gabuco, slowly slumping to the ground.[6] He approached Bagamiel and on noticing that he sustained a gun shot wound he boarded him on a tricycle and brought him to a hospital.[7]

As a result of that incident on the evening of February 5, 1990, accused-appellant P/SGT. JOSE ARGUELLES was charged of the crime of Murder, penalized under Article 248 of the Revised Penal Code, under an information[8] which reads:

"That on or about the 5th day of February, 1990, at Barangay San Pedro, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused with treachery and evident premeditation, with

intent to kill and while armed with a gun did then and there willfully and feloniously assault, attack and shot one Bagamiel Gabuco, thereby inflicting upon him gunshot wound in his body, (sic) which was the direct and immediate cause of his death.

CONTRARY TO LAW."

Upon arraignment, accused-appellant pleaded not guilty to the crime charged.

After a trial on the merits, he was found guilty of the crime of murder, and sentenced accordingly as follows:

"WHEREFORE, premises considered, after the City Prosecution Office has successfully prosecuted this case, the Court hereby finds the herein accused, P/Sgt. JOSE ARGUELLES guilty beyond reasonable doubt of the crime of Murder herein charged against him for the treacherous and premeditated shooting and killing of Bagamiel Gabuco, without any mitigating circumstance whatsoever, and considering the provistance (sic) of Article 248 of the Revised Penal Code, it hereby sentences him to a penalty of RECLUSION PERPETUA, with all the accessory penalties provided for by law, and to pay actual, moral and exemplary damages to the heirs of the victim whom he killed in the prime of his life, in the sum of P150,000.00, and to pay the costs.

"With this maximum penalty imposed upon the accused that makes him a maximum security prisoner and to prevent his escape or reprisal, the PNP Provincial Director of Palawan and the City Warden/City Jail Officials of Puerto Princesa City are hereby ordered to immediately transport the said accused, P/Sgt. Jose Arguelles to the national penitentiary, Muntinlupa, Metro Manila to serve his sentence there.

"IT IS SO ORDERED."[9]

Hence, this appeal with the accused-appellant raising two errors allegedly committed by of the lower court, to wit:

I

IN CONSIDERING THE ELEMENTS OF TREACHERY AND EVIDENT PREMEDITATION IN THE INSTANT CASE.

II

IN NOT CONVICTING THE ACCUSED-APPELLANT TO PLAIN AND SIMPLE HOMICIDE THROUGH RECKLESS IMPRUDENCE.

We find no merit in the appeal.

The evidence before Us clearly and conclusively prove that the one shot fired from Arguelles' weapon was treacherously directed at the victim. The location of the wound shows that the victim was shot at his back specifically below his waistline, as evidenced by the autopsy report[10] prepared by Dr. Metodio R. Lazo.

The testimony of prosecution witness, Ismael Mulaga is more revealing. Thus -

"Q - Will you kindly tell the Honorable Court what was that unusual incident?

A - While I was walking, a tricycle suddenly stopped and then I turned back my head and then somebody said do not run, this is a policeman.

Q - And you said you saw a policeman who uttered words this is a policeman do not ran, do you know who is this policeman you are referring to?

A - Yes, ma'am, Jose Arguelles."

x x x x x x x x

"Q - And when you saw Jose Arguelles alighting from the tricycle and you heard the words "Police ito huwag kang tatakbo" have you observed that the said policeman was carrying anything?

A - There was ma'am.

Q - What was it?

A - A gun ma'am.

Q - What kind of gun was it if you know, long or short?

A - Short gun, ma'am."

x x x x x x x x

"Q - And after the said policeman uttered those words Mr. witness, do you know to whom was that word being address?

A - Yes ma'am, to Bagamiel Gabuco."

x x x x x x x x

"Q - After you heard those words what happened next if any?

A - He was hit by Arguelles.

Q - Who was hit by Arguelles?

A - Bagamiel Gabuco."[11]

x x x x x x x x

"Court - Are you positive that it was the accused Jose Arguelles who shot the victim?

A - Yes, your honor.

Court - And you cannot be mistaken?

A - Yes, your Honor, I cannot be mistaken."[12]

Accused-appellant does not deny having shot the victim. His version was that the shooting was accidental. In fact, this was his testimony before the hearing officer of the Napolcom as narrated in the appealed decision, to wit:

"Q - And all of a sudden you fired a warning shot?

A - Noon ma-out balanced ako ay mayroon siyang binubunot sa baywang niya, yong baril ko naman binubunot ko pa lang sumabit yong kamay ko pumutok na agad hindi ko pa gaanong nabubunot. (tsn, page 9, April 18, 1991, Administrative Case No., 7--90, Exhibit 'D-1').

Continuing with his testimony before the Hearing officer of the Napolcom, the following evidence had likewise been adduced:

Q - But the victim has no firearm?

A - May parang binubunot siya.

Q - But you have not seen it?

A - Wala.

Q - Can you explain before this Honorable Investigator why he kicked you and he was hit by a bullet at the back?

A - Hindi ko nga ho malaman din. Ako mismo nahihiwagaan din.

Q - That he was facing you and he was hit at the back?

A - Yes, sir.

Q - And you fired only one shot?

A - Yes Sir. (Exhibits 'D-1' and 'D-2', tsn pages 9 and 10, April 18, 1991 Administrative Case No. 7-90 [Underlining supplied]."[13]

Jurisprudence teaches us that there is treachery when the offender adopts means, methods, or forms in the execution of the felony which ensure its commission without risk to himself arising from the defense which the offended party might make.[14] Evidence shows that the victim was shot at the back making him helpless and consequently not given a chance to defend himself from his assailant. Clearly, there was treachery but no evident premeditation.

Nor do We find error on the part of the trial court in finding accused-appellant guilty of the crime of Murder and not simple Homicide. The trial court said:

"This is a prosecution for murder (Article 248, Revised Penal Code) and in the Information filed the City Prosecutor alleged that the accused committed the crime charged with treachery and evident premeditation. Any killing that is attended by treachery or evident premeditation qualifies the offense to murder.

"There is no doubt as shown by the evidence established in the record, that the accused Arguelles shot or killed Bagamiel Gabuco with treachery, for it was conclusively proven that the lone fatal bullet fired entered the "left back of the victim's body, below his waistline." In other words, the victim was shot and hit at his back where he has no eyes to see the assailant and this fact qualifies the killing to murder because in that position that late night of the incident he (victim) could not have possibly defended himself from the attack or avoided the gunfire, what with the suddenness of the assault. Gabuco was utterly defenseless then.

x x x x x x x x

"The prosecution has proven that accused P/Sgt. Arguelles really shot and killed the victim, Bagamiel Gabuco with treachery and evident premeditation for which he should be made liable. These aggravating circumstances are too puissant to be ignored. Being a policeman entrusted with the duty to protect, instead of kill (sic) an innocent civilian, the act of the accused should not only be condemned but punished as well with the full might of the law. What happened is exacerbated by accused's badge as a police officer and an enforcer of the law."[15]

In the dispositive portion of the decision of the court a quo, the court granted the amount of P150,000 as actual, moral and exemplary damages against accused-appellant. However, We find nothing in the records to support the same. Accordingly, We hereby set aside the imposition of the amount of P150,000.00 as damages and instead impose the amount of P50,000.00 as indemnity to be paid to the heirs of the victim.

WHEREFORE, there being no error in the appealed decision, except as to the deletion of damages as elucidated in the preceding paragraph, the same is hereby AFFIRMED. The accused-appellant is hereby ordered to pay the amount of P50,000.00 as indemnity which is to be paid to the heirs of the victim.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

- [1] T.S.N., June 20, 1991, pp. 2-3.
- [2] Id. at p. 4.
- [3] Id. at pp. 5-6.
- [4] Id. at p. 6.
- [5] Id. at p. 3.
- [6] T.S.N., July 11, 1991, pp. 2-3.
- [7] Id. at p. 3.
- [8] Records, p. 1.
- [9] Decision, Regional Trial Court, p. 14; Rollo, p. 61.
- [10] Records, p. 60.
- [11] T.S.N., June 20, 1991, pp. 3-5; Records, pp. 125-127.
- [12] T.S.N., June 20, 1991, p. 20.
- [13] Decision of the RTC, p. 8.
- [14] People vs. Cuyo, 196 SCRA 447.
- [15] Decision of the Trial Court, pp. 12-13.

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