

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO BARTE Y CABUSAS, ACCUSED-APPELLANT.

G.R. No. 103211. February 28, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

SONNY CAPUA was shot dead with a super .38 caliber revolver which hit him at the back of his head, the lone bullet entering behind his right ear and exiting below his left near the neck.[1]

For the death of Sonny, MARIO BARTE was charged with Murder but convicted by the trial court of Murder With Use of Unlicensed Firearm, pursuant to P.D. 1866, as amended.[2] But to this day Mario Barte denies the charge.

The prosecution largely rests its theory on the testimony of Jovita Capua, widow of the victim, who recounted that on 18 September 1989, at about six o'clock in the evening, she and her husband were at their canteen in Tebag, Sta. Barbara, Pangasinan. They were attending to their customers among whom were Ernesto Sapatero, Mario Catunggal and accused Mario Barte,[3] a barangay councilman of Tebag West.[4] After the customers were served eleven bottles of beer, Mario Barte left.[5] Meanwhile, her husband sat down to rest, his back leaning against the wooden grilled window.[6] She was, on the other hand, standing in front of her husband and facing him while wrapping the dog meat which was ordered by another customer. She could have a view of the outside through the window grilles.[7] A few minutes later, at about six-thirty, her husband was shot from behind by appellant who was outside the canteen.[8]

She readily recognized appellant as she immediately looked at him after he shot her husband. She was able to identify appellant as the place was illuminated by two light bulbs: a 25-watt installed outside the canteen where he was, and a 50-watt inside the canteen where she and her husband were. She knew the appellant very well since they were childhood "barangaymates." [9] After her husband was shot, she was brought to her sister's place to be calmed down as she was hysterical, and later transferred to Matic-Matic, to the house of Barangay Captain Ernesto de Guzman, a cousin of her husband,[10] where she stayed for about an hour. There, at about eight-thirty that same evening, she was questioned by a police officer.[11] Three days later, or on 21 September 1989, she executed a sworn statement pointing to appellant as the assailant of her husband.[12]

The prosecution also presented M/Sgt. Rodrigo Escaño, an officer detailed in the Firearms and Explosives Unit, Camp Crame, who testified that appellant was not a licensed firearm holder. M/Sgt. Escano identified the certification issued by his Commanding Officer that appellant was "not a licensed/registered firearm holder of any kind and caliber per verification from available records on file." [13]

The final witness for the prosecution was Dr. Teresa N. Peralta, Rural Health Physician of Sta. Barbara, Pangasinan, who confirmed the autopsy report she made and maintained that the cause of death was "Cardiorespiratory Arrest Secondary to Hypovolemic Shock Secondary to Gunshot Wound." [14]

On his part, accused-appellant denied any participation in the killing, claiming that while he was indeed in the canteen of the Capuas at around five-thirty that afternoon, he went home at about six o'clock and stayed home until midnight.[15]

To corroborate his alibi, the accused presented Municipal Councilor Onofre Palaganas who was drinking in the canteen at the time of the incident. Palaganas confirmed that the accused left the canteen at about six o'clock that evening. Then, at about seven twenty-five, he heard a gunshot. He stood up and saw the victim already sprawled on the ground. He did not see the assailant;[16] neither did he notice appellant return to the canteen.[17] The victim's wife, Jovita, was at the back; she was crying. When asked who shot her husband, her answer was, "I don't know, Kuya." [18]

The defense then presented Cpl. Ernesto Parayno, one of those who went to the crime scene to investigate. Corporal Parayno narrated that when he arrived at the canteen, "[n]o one could tell who really is (sic) the suspect,"[19] and that the wife of the deceased could no longer be questioned as she was already hysterical.[20] But Pat. Jaime Tamayo, who was with Cpl. Parayno at that time, recounted that he was able to ask Jovita Capua who killed her husband but she said she did not know.[21]

The defense also called Pfc. Aldin Poserio who conducted a follow-up investigation. He narrated that a day after the incident, appellant was first invited to the local police station and then brought to the National Bureau of Investigation in Dagupan City where he was subjected to a paraffin test.[22] The findings showed that "[t]he diphenylamine test for nitrates performed on the above-mentioned specimens gave NEGATIVE RESULTS." [23]

On 17 December 1991, the Regional Trial Court, Branch 44, Dagupan City,[24] rendered judgment finding accused-appellant guilty of Murder with Use of Unlicensed Firearm and sentenced him to reclusion perpetua. Thus -

The Court believes that the killing was perpetrated with the use of an unlicensed firearm. First, it was established that accused Mario Barte is (sic) not a licensed/registered firearm holder of any kind and caliber x x x [A]s the killing was committed with the use of an unlicensed firearm, and in view of the provision of paragraph 2 of Section 1 of PD 1866 which codifies the laws on illegal/unlawful possession of firearms and ammunitions or explosives, the maximum penalty should be imposed.

Indeed, we are not persuaded by appellant's profession of innocence. The testimony of Jovita Capua clearly establishes his guilt. It was given in a straightforward, detailed and unequivocal manner, notwithstanding the gruelling cross-examination by defense counsel who grilled the grieving widow for four days,[25] asking a wide range of seemingly irrelevant questions, e.g., from what time of the day the food in their canteen was cooked to what kind of meat was used for the adobo they served.[26] She was nevertheless able to demonstrate lucidly what transpired that fateful evening and to identify appellant positively as her husband's assailant. In fact, the cross-examination even supplemented and reinforced her direct testimony which, on its own, was already crystal-clear. Thus, on the second day of her cross-examination, she unflinchingly narrated -

ATTY. AOANAN (defense counsel):

Q Now, madam witness, when you saw your husband x x x fell on the floor, was it not that you immediately went to him and embraced him?

JOVITA CAPUA:

A No sir, I first looked at the man and embraced my husband.

Q Who was that man?

A Mario Barte.

COURT:

Q Why did you look at that man first and embraced your husband?

A Because I was facing him, I saw him by the window, that's why I looked at him first and then to my husband.

Q You were not sure that he was hit, why did you look first to Romeo (sic) Barte?

A Because I saw the gun.

Q Where did you see the gun?

A At the window.

x x x x

ATTY. AOANAN:

Q And when you saw the gun, madam witness, was the gun inside the four walls of the canteen?

A Outside the walls, sir.

Q So that you are telling the Court that when you heard the sound of the gun, you are (sic) more interested in finding where the source of the gun it (sic) came from?

A Yes, sir.

COURT:

Q Why?

A So that I know who hit my husband, sir.

ATTY. AOANAN:

Q And after you saw, that's the time you cry (sic)?

A Yes, sir.

COURT:

Q I want to clarify this matter, when did you cry, was it before you embraced your husband or when you were embracing your husband?

A When I was embracing my husband, sir.

Q Were you able to talk with him?

A No more, sir.

Q Why?

A He could no longer talk because the main vein of his neck was cut and blood was oozing therefrom."[27]

A witness who testifies in a candid, categorical and consistent manner is a credible witness.[28] Consequently, if credible and positive, the testimony of a single witness is sufficient to convict.[29] Indeed, she remained consistent and free from self-contradiction during the four days that she was cross-examined.

We simply cannot set aside the factual findings of the trial court absent any showing of capriciousness on its part. Here, appellant did not even impute arbitrariness to the trial court. Hence, its factual findings must be sustained.

Accused, on the other hand, merely came out with alibi to establish his innocence. But his alibi remains uncorroborated. Weak as his alibi may be, it becomes even weaker when it is not bolstered by any other piece of competent evidence. Councilor Palaganas merely confirmed that appellant left the canteen at about six o'clock that evening. He was not certain whether appellant returned thereafter. Neither could Palaganas assert that accused-appellant only stayed home that evening. Hence, aside from his bare allegation, appellant's alibi that he was at home at the time of the incident remains unsubstantiated.

Besides, we have said time and again that for an alibi to prosper, the accused must show that it was impossible for him to have been at the scene of the crime at the time of its commission. This, appellant failed to do. In fact, the records show that he could have easily returned to the canteen after he left at around six o'clock that evening, considering that his house was only 50 meters away.

Finally, the positive identification of the appellant as the perpetrator of the crime by the widow has completely demolished his alibi. We have consistently ruled that the defense of alibi cannot prevail over the positive identification of the accused. Jovita was admittedly in a position to see and identify the killer of her husband who was only three (3) to four (4) meters away. The place was sufficiently lighted and he was her childhood barrio mate.

Perhaps aware of the weakness of his defense in view of his positive identification, appellant argues that "the identification made by Mrs. Capua does not deserve the consideration of the court"[30] as she was not able to name the assailant of her husband when asked at the scene of the crime by both defense witnesses Councilor Palaganas and Pat. Tamayo. This is inconsistent with the testimony of defense witness Cpl. Ernesto Parayno, who eventually became the Station Commander of the Philippine National Police in Sta. Barbara, Pangasinan -

ATTY. AOANAN (defense counsel):

Q When you went to the scene of the incident x x x do you remember if Jovita Capua, the wife of the victim Sonny Capua, was also present?

POLICE OFFICER ERNESTO PARAYNO:

A She was there, sir.

Q And did you ask her questions?

A At that time, she was at (sic) hysterical condition, sir.

x x x x

Q Were you able to ask her questions?

A No more, she was already on (sic) hysterical condition.[31]

The testimony of Councilor Palaganas as well as that of Pat. Tamayo was further denied categorically by the victim's wife when she was presented as a rebuttal witness -

ATTY. BUGARIN (public prosecutor):

Q Madam Witness, Kgd. Palaganas, a witness for the defense, testified before this Honorable Court that when your husband Sonny Capua was shot, he asked you who shot your husband and you answered that you don't (sic) know, what do you say about that?

JOVITA CAPUA:

A I was not able to talk to Kgd. Palaganas because he already went out.

Q Madam Witness, Pat. Tamayo, also a defense witness, testified before this Honorable Court that when he was investigating this case and he asked you who shot your husband, you answered that you do (sic) not know, what do you say about that?

A No policeman ever saw me there because I was immediately brought to the house. When the policemen arrived, I was no longer there."[32]

After a careful assessment of the evidence, we find the version of the prosecution more in harmony with human nature, while the testimony of the witnesses for the defense is burdened with material inconsistencies, hence, we affirm the court a quo. Indeed, Jovita could have been hysterical upon seeing her husband murdered right before her eyes. Thus, she had to be led away and brought somewhere else to calm her down.

The defense apparently attempts to muddle the events by insinuating that the wife of the victim admitted that she was able to talk to a police officer at the crime scene that same evening where she allegedly said she did not know who killed her husband. The record however discloses that the inquiry took place in the house of Barangay Captain Ernesto de Guzman, away from the scene of the crime. This the defense failed to discuss or clarify, much less refute.

The defense then creates a fallacy when it cites *People v. Mendoza*[33] where we said that "[t]he (Diphenylamine or Paraffin) test is not conclusive as to the presence of gunpowder because fertilizers, cosmetics, cigarettes, urine, and other nitrogenous compounds with nitrites and nitrates will give a positive reaction, citing Pedro Solis, *Legal Medicine* (1987), p. 380,"[34] and states the quoted portion in the affirmative to read "paraffin test is conclusive as to the absence of gunpowder." [35] Since accused-appellant was found negative for nitrites and nitrates, counsel for the defense concludes that appellant could not have fired a gun. Certainly, this conclusion does not follow. Defense counsel seems to have purposely omitted our clarification in *People v. Mendoza* which immediately follows the portion he quoted. There, we cited *American Jurisprudence, Proof of Facts Annotated*, Vol. 5, 119-120 (1960), thus -

This (Diphenylamine or Paraffin) test has proved extremely unreliable in use. The only thing that it can establish is the presence or the absence of nitrates or nitrites on the hand. It cannot be definitely established from this test alone that the source of nitrates or nitrites was the discharge of a firearm.[36]

The defense also appears to have ignored the testimony of its expert witness, Forensic Chemist Elvira Del Rosario, who conducted the diphenylamine test on the hands of appellant, and who testified that -

FISCAL BUGARIN:

Q Being an expert witness, is it not possible that a person (who) might have fired the gun, got negative nitrate burns?

A It is possible.[37]

We are convinced that the prosecution has proved the guilt of the accused-appellant beyond reasonable doubt; that the commission of the offense was attended with treachery; that the unsuspecting, defenseless victim was fatally shot from behind; and, that the offender employed means to insure the slaying without risk to himself arising from the defense which the offended party might make. However, we cannot agree with the trial court that the accused should be convicted of Murder with Use of Unlicensed Firearm under P.D. 1866, considering that nowhere in the Information is it alleged that he used an unlicensed firearm. The Information merely states that "the above-named

accused, armed with a short firearm, with deliberate intent to kill, with treachery x x x x did then and there willfully, unlawfully and feloniously shot SONNY CAPUA x x x x" Hence, even if the prosecution has established that accused-appellant was not legally issued any firearm to qualify the crime to Murder with Use of Unlicensed Firearm, we cannot convict him for this particular offense as that would violate a fundamental constitutional precept, i.e., that the accused shall have the right to be fully informed of the nature and cause of the accusation against him.[38] Consequently, the accused can only be declared guilty of Murder.

We however sustain the sentence imposed by the court a quo, i.e., reclusion perpetua, as this is the correct penalty imposable for Murder, absent any modifying circumstance, under the Revised Penal Code.[39] This is the same sentence imposed by the trial court in view of the proscription of the death penalty under the 1987 Constitution, which the trial court would have otherwise imposed for the crime of Murder with Use of Unlicensed Firearm under P.D. 1866. To the civil indemnity granted by trial court to the heirs of Sonny Capua in the amount of P50,000.00, we further award P20,000.00 for moral damages and P10,000.00 for death and burial expenses, both of which were proved during the trial but were either overlooked or simply ignored by the trial court.

WHEREFORE, we find the accused MARIO BARTE guilty beyond reasonable doubt of the crime of Murder as charged, not of Murder with Use of Unlicensed Firearm as found by the trial court. However, we sustain the imposition of reclusion perpetua by the court a quo as it is the correct penalty for Murder. In addition to the civil indemnity of P50,000.00, we award to the heirs of the deceased Sonny Capua P20,000.00 for moral damages and P10,000.00 for death and burial expenses, with costs against accused-appellant Mario Barte y Cabusas.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Post-Mortem Report of Dr. Ma. Teresa N. Peralta, Rural Health Physician, Sta. Barbara, Pangasinan; TSN, 27 March 1991, pp. 7-8.

[2] A Presidential Decree "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives; and Imposing Stiffer Penalties for Certain Violations thereof and for Relevant Purposes."

[3] TSN, 18 February 1991, pp. 3-6.

[4] Id., 25 April 1991, p. 8.

[5] Id., 18 February 1991, pp. 7-8.

[6] Id., pp. 7, 9-10.

[7] Id., pp. 11, 30-31.

[8] Id., 26 February 1991, p. 23.

[9] Id., 18 February 1991, pp. 8-13.

[10] Id., pp. 13, 25-26.

[11] Id., p. 28.

[12] Id., pp. 15-16; Records, pp. 3-4 (Exh. "C").

- [13] Records, p. 15 (Exh. "H").
- [14] See Note 1.
- [15] TSN, 25 April 1991, pp. 3-5.
- [16] Id., 5 April 1991, pp. 3-5, 11, 13.
- [17] Id., p. 15.
- [18] Id., p. 5.
- [19] Id., 2 April 1991, p. 10.
- [20] Id., pp. 10-11.
- [21] Id., 8 April 1991, p. 5.
- [22] Id., 2 April 1991, pp. 19-20.
- [23] Records, p. 22, Chemistry Report No. C-89-1204.
- [24] Penned by Judge Crispin C. Laron, Presiding Judge.
- [25] 18 February 1991, 26 February 1991, 6 March 1991 and 6 May 1991.
- [26] TSN, 26 February 1991, pp. 7-14.
- [27] Id., pp. 19-21.
- [28] *People v. Palicte*, G.R. No. 101088, 27 January 1994.
- [29] *People v. Amaguin*, G.R. Nos. 54344-45, 10 January 1994.
- [30] Brief for Accused-Appellant, p. 4; Rollo, p. 67.
- [31] TSN, 2 April 1991, pp. 10-11.
- [32] Id., 6 May 1991, pp. 12-13.
- [33] G.R. No. 67858, 29 June 1989, 174 SCRA 432.
- [34] Brief for Accused-Appellant, p. 9; Rollo, p. 72.
- [35] Ibid.
- [36] Note 33, p. 449.
- [37] TSN, 3 May 1991, p. 5.
- [38] Sec. 14, par. (2), Art. III, 1987 Constitution.
- [39] *People v. Muñoz*, G.R. Nos. 38969-70, 9 February 1989, 170 SCRA 107 (En Banc); *People v. Benitez, Jr.*, G.R. No. 83697 and *People v. Ilustrisimo*, G.R. No. 83698, both prom. 4 October 1991, 202 SCRA 478; *People v. Literado*, G. R. No. 77114, 27 May 1992, 209 SCRA 319; *People v. Abuyen*, G.R. No. 77285, 4 September 1992, 213 SCRA 569; *People v. Fabros*, G.R. No. 90603, 19 October 1992, 214 SCRA 694; *People v. Pasiliao*, G.R. Nos. 98152-53, 26 October 1992, 215 SCRA 163; *People v. Vergara*, G.R. No. 103313, 5 May 1993, 221 SCRA 611; *People v. Mosende*, G.R. No. 97170, 10 December 1993; *People v. Manalo*, G.R. No. 107329, 24 January 1994.

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