

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EXIQUIEL TALAVER, ACCUSED-APPELLANT.

G.R. No. 105390. February 23, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

In the early evening of May 18, 1986, Technical Sergeant Leonardo Bautista of the Philippine Navy, while engaged in a drinking session with his friends in front of a sari-sari store in Zamboanga City, sustained multiple gunshot wounds allegedly inflicted by accused-appellant Exiquiel Talaver. The victim was rushed to a nearby hospital but he expired after a few days.

In an information filed on August 11, 1986, appellant was charged with murder committed as follows:

"That on or about May 18, 1986, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, armed with a handgun, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously, assault, attack and shoot with the said weapon that he was then armed with, at the person of Leonardo Bautista y Aquino, thereby inflicting mortal gunshot wounds upon the latter's person, which directly caused his death, to the damage and prejudice of the heirs of said victim.

CONTRARY TO LAW."[1]

Due to the fact that appellant could not be apprehended for some time, the case against him was archived on December 17, 1987. However, on August 19, 1991, appellant was arrested and detained thereafter. Arraigned on September 13, 1991, he pleaded not guilty and trial on the merits ensued,[2] during which the evidence for the prosecution sought to present the antecedent facts as hereunder summarized.

From the records of this case, it does appear that at around six o'clock on May 18, 1986, four persons, namely, Victor Son, Alfredo Teves, Leonardo Bautista and a certain "Men" were drinking beer outside the "Nora Joy" store, situated at Ortega Street, Tetuan, Zamboanga City.[3] Exiquiel Talaver came over from a nearby store and approached the aforementioned group. As he approached, appellant greeted Victor Son, saying "Hi, Vic," and the latter replied, "Hi, General Ver." Appellant then asked, "O, anong problema," (What's the problem?). Apparently irritated by the question, Leonardo "Butch" Bautista stood up, at the same time holding the pistol on his waist, and retorted, "O, bakit kung may problema, kaya mong lutasin?" (If there is a problem, can you solve it?).[4] Immediately thereafter, Bautista pulled out his pistol[5] which was tucked in his waist under his shirt.

Talaver hurriedly left, then ran away, and was chased by Bautista,[6] but the latter apparently failed to overtake appellant. On the advice of Teves, Son followed them, but nevertheless lost track of the two, and by the time Son went back to the store, Bautista was already seated and drinking together with the rest of the group. About fifteen to twenty minutes later,[7] appellant suddenly arrived and appeared from behind Bautista. Talaver held a revolver with two hands positioned straight forward, aimed, and fired more than one shot,[8] causing the victim to sustain three gunshot wounds in the back portion of the waist and in the buttocks.[9]

The foregoing facts narrated by Victor Son were corroborated by Alfredo Teves, another prosecution witness. Teves testified that while he was seated on a bench in front of the deceased, he saw appellant fire the fatal shots from behind the victim. He further recounted that he forthwith proceeded to hail a tricycle, and after he had placed the victim in the vehicle, the latter was entrusted to one Carlos Oyao who brought the victim to the Brent Hospital at Cawa-Cawa Boulevard. Teves, on the other hand, boarded his own motorized bicycle and followed the tricycle to the hospital.[10] The victim was later transferred to the Zamboanga General Hospital where he died. The cause of death was "cardio-pulmonary arrest secondary to pulmonary embolism GSW with multi-perforated small intestine." [11]

Appellant, on his part, insisted that at about 5:00 P.M. on May 18, 1986, he went to Ortega Drive at Tetuan, Zamboanga City, which he described as a squatters' area, to see a certain "Frank," supposedly a co-worker of his brother at ZAMCELCO. Not finding Frank at his residence, he proceeded to a nearby basketball court and, thereafter, he passed by Nora's store to buy softdrinks. While he was at a distance of about ten meters therefrom, he was greeted by Victor Son, whom he had met in one of their basketball games. He returned the latter's greeting by saying, "What's the problem?" Then one of Son's companion stood up and approached him. The man was holding a pistol which he poked at appellant, saying, "Vagina of your mother, why if I have a problem can you solve it?" Upon seeing the drawn pistol and hearing the words uttered, appellant ran away, but the man chased him and even fired at him once but missed.[12]

He proceeded to Matulungin Drive which is on the other side of Ortega Street. Later, he boarded a tricycle and went to the house of his brother, Federico, in Tumaga, Zamboanga City where he spent the night. The following morning, he went home to Basilan Province, without knowledge of any untoward incident that transpired at Ortega Drive. He further explained that the purpose of his going to Zamboanga City was to turn over to his brother the produce of the latter's farm and fishpond at Maluso, Basilan Province and also to visit his friend, Frank, whose surname he cannot remember.[13] The store owner, Nora Luy, was later presented and she recounted what she could remember of the incident,[14] while the brother of appellant gave corroborative testimony that appellant was with his family at around 8:00 P.M. and left for Basilan at around 6:00 A.M. the following day.[15]

In its decision in Criminal Case No. 2183 (8203), dated February 6, 1992, the Regional Trial Court of Zamboanga City, Branch 13,[16] found appellant guilty beyond reasonable doubt of the crime of murder, without any attendant aggravating or mitigating circumstance, and sentenced him to suffer the penalty of reclusion perpetua with the accessory penalties attached thereto, to indemnify the heirs of the deceased victim in the amount P50,000.00, and to pay the costs.

Before us, appellant contends that the trial court committed "grave and reversible" errors (1) when it classified the crime committed as murder, qualified by treachery, without proof beyond reasonable doubt that the elements of alevosia are present; and (2) in convicting appellant of murder without proof beyond reasonable doubt that he perpetrated the crime as charged.[17] These assignment of errors should logically be taken up and discussed in inverse order. We shall accordingly do so.

Appellant disputes the finding on his culpability and would insist on his denial of having had any participation in the killing of the victim, in brief, a defense of denial cum alibi. The clear and positive identification made by the witnesses for the prosecution is, however, entitled to more weight than appellant's protestations.

Victor Son, one of the prosecution witnesses obviously knew whereof he spoke, as he was an actual eyewitness with full opportunity to observe the commission of the felony. He accurately described the event in detail, thus:

"Q When Talaver arrived at the place where you were drinking, what did he do next?

A He shot at the back of Butch Bautista.

Q What did he use in shooting Butch Bautista?

A Revolver.

Q Will you please demonstrate to the court how he shot Butch Bautista?

A He was using his two hands straight forward.

x x x

Q More or less how far was he from the back of Butch Bautista?

A More or less two meters.

Q More or less how many shots did you hear?

A I cannot remember anymore, more than one shot, I cannot remember, but it is more than one shot.

Q At the time when Talaver shot Butch Bautista, more or less how far were you from Butch Bautista?

A A distance of one and a half meters.

Q What is your position in relation to Butch Bautista?

A We were facing each other.

Q Now will you please tell the Honorable Court why do you know Exiquiel Talaver?

A We are neighbors.

Q And how is his house more or less from your house?

A 100 meters more or less.

Q Now, what is the full name of Talaver?

A Exiquiel Talaver.

Q If that Exiquiel Talaver will be in court today, will you be able to point to him?

A Yes, sir.

Q Now will you please look around in (the) court(room), if is around, will you please point to him?

A He is there. (The witness pointed to a person (who) when asked (for) his name identified himself as Exiquiel Talaver)."[18]

We reiterate once again that the defense of alibi being admittedly the weakest, it cannot prevail over positive identification of the accused by prosecution witnesses.[19] Positive identification prevails over the denial of the accused, unless the latter can establish the physical impossibility of his presence at the place and time of the commission of the crime,[20] either before, during, or after he was at such other place.[21] It is not enough to prove that the appellant was somewhere else when the crime was committed, but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity.[22] Where, nothing supports the alibi except the testimony of a relative, it deserves but scant consideration,[23] as alibi must be proved by independent witnesses.[24] In the instant case, appellant's alibi is definitely unsustainable.

With regard to the alleged discrepancies in the testimonies of the prosecution witnesses, as pointed out by appellant, the most that can be said is that they are minor contradictions. These inconsistencies are insignificant and may be attributed to the lapse of time between the event and the testimony. On the other hand, such discrepancies are indicative of credibility, for a completely congruent testimony is suspect, considering that different persons obtain differing impressions.[25]

The alleged contradictions between the testimony of Victor Son and his answer to Question No. 9 in his affidavit, where he said that when Bautista confronted Talaver, the former did not only stand up but also drew his gun and cocked it, was clarified during the cross-examination. Son explained that when he said Bautista just held his gun on his waist, that was when he was already shot,[26] not while he was chasing Talaver during the first confrontation.[27] After the remark "Anong problema," Bautista stood up, at the same time holding his pistol, and answered "Why, if there's a problem, can you solve it?"[28]

Moreover, even assuming arguendo the existence of said alleged contradictions, they do not detract from his credibility or that of the other witnesses. It is a matter of judicial experience that an affidavit, being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestions, sometimes for want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory for his accurate recollection of all that belongs to the subject.[29]

On the second imputed error, we are of the same opinion as the court below that treachery attended the killing of the victim.

This Court has consistently reiterated the statutory norm that to constitute treachery, two conditions must be present, to wit: (1) employment of means of execution that gives the person no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[30]

Also, when an event has supervened between the challenge and the assault, there is no longer any reason for the victim to expect the attack, hence such attack thereafter would clearly be attended by alevosia. Thus, where the attempt of the victim's son to pacify the accused and his companion had seemingly succeeded, there was no longer any reason for either the victim or his son to expect any attack from the accused. Hence, where thereafter the accused suddenly and unexpectedly rushed at the victim and stabbed him in the back, the attack was clearly attended by alevosia.[31]

The case at bar is analogous to the circumstances of the aforecited case. Inceptively, the victim made a challenging retort during an exchange of words with appellant. There was, however, the supervention of the fact that appellant, upon seeing the victim draw his firearm, did not do anything but instead fled from the scene. Confidently, the victim resumed his drinking spree with the rest of the group. The deceased obviously thought that appellant would not retaliate and was consequently taken completely by surprise. Otherwise, he could have gone home or could have warned his companions to be cautious just in case appellant would return to retaliate.

While it is true that the victim was in a pugnacious mood in confronting appellant, coupled with an aggressive stance of holding his firearm during the first confrontation between them, there was, however, no belligerent reaction on the part of appellant which could have forewarned the victim of a subsequent retaliation. Evidently, the victim did not expect that a reprisal, retaliatory in character, would endanger his being, as he resumed his merry-making. When the fatal firing of the revolver was made while the victim was not in a position to defend himself, that mode of execution was employed with the victim having no opportunity at all to repel the aggression or to escape. When appellant ran away and procured a firearm to perpetrate the crime of murder, the means employed was consciously and deliberately adopted.

Restating the observation of the Solicitor General, the time gap between the moment when Bautista returned to his seat after having chased appellant away and the actual shooting thereafter was relatively brief such that a retaliation could not have been expected nor anticipated. Also, appellant knew that a .45 caliber pistol has a powerful capacity, hence he chose to maneuver from behind the victim to insure success by utilizing the element of surprise. The previous incident of appellant having been chased, coupled with a threatening attitude of the victim, was sufficient warning to appellant that if he were to shoot while coming from the direction where he had previously approached the group, he would not be able to consummate his attack. Ergo, he decided to attack from behind, otherwise he would expose himself to risk. In fact, the deceased even tried to draw his pistol after being shot, in order to fire back against appellant.[32]

Lastly, the factual environment of this case reveals that the aggravating circumstance of evident premeditation alleged in the information has neither been proved nor can the elements thereof be inferred. In any event, under the present state of the law and in light of the constitutional proscription which is applicable to this case, the presence or absence of such aggravating circumstance would be of no significance considering the penalty imposed on accused-appellant Exiquiel Talaver.

WHEREFORE, on the foregoing premises, the challenged judgment of the trial court is hereby AFFIRMED in toto.

SO ORDERED.

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

[1] Original Record. 1.

[2] Rollo, 13.

[3] TSN, October 14, 1991, 3.

[4] Ibid., id., 4-5, 15-16; October 28, 1991, 13.

[5] Ibid., October 28, 1991, 14.

[6] Ibid., October 14, 1991, 5, 15.

[7] Ibid., November 19, 1991, 12.

[8] Ibid., October 24, 1991, 5, 16.

[9] Ibid., October 29, 1991, 7.

[10] Ibid., October 28, 1991, 10-18.

[11] Ibid., id., 6; Exhibits B and B-3.

[12] Ibid., November 19, 1991, 14-18.

[13] Ibid., id., 19-20.

[14] Ibid., id., 2-13.

[15] Ibid., id., 29-30.

[16] Original Record, 50-54; Judge Carlito A. Eisma, presiding.

- [17] Brief for Accused Appellant; Rollo, 39.
- [18] TSN, October 14, 1991, 5-6.
- [19] People vs. Lago, G.R. No. 96090, March 30, 1993, 220 SCRA 578.
- [20] People vs. Escosio, et al., G.R. No. 101742, March 25, 1993, 220 SCRA 475.
- [21] People vs. Libungan, G.R. No. 102351, March 22, 1993, 220 SCRA 315.
- [22] People vs. Bernardo, et al., G.R. No. 97393, March 17, 1993, 220 SCRA 31.
- [23] People vs. Waggay, et al., G.R. No. 98154, February 9, 1993, 218 SCRA 742.
- [24] People vs. Hubilo, G.R. No. 101741, March 23, 1993, 220 SCRA 389.
- [25] People vs. Gutierrez, et al., G.R. No. L-30314, March 15, 1982, 112 SCRA 409.
- [26] TSN, October 14, 1991, 13.
- [27] Ibid., October 28, 1991, 14.
- [28] Ibid., October 14, 1991, 16.
- [29] People vs. Laredo, et al., G.R. Nos. 81249-51, May 14, 1990, 185 SCRA 383.
- [30] People vs. Mallari, G.R. No. 94299, August 21, 1992, 212 SCRA 777; People vs. Mabuhay, G.R. No. 87018, May 24, 1990, 185 SCRA 675.
- [31] People vs. Gutierrez, Jr., G.R. No. L-39383, March 14, 1988, 158 SCRA 614.
- [32] Rollo, 121-122.

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