

## **PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO LEDESMA ALIAS “JUAN LEDESMA”, ACCUSED-APPELLANT.**

*G.R. No. 105958. November 20, 1995*

Ponente: BELLOSILLO, J.

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### **BELLOSILLO, J.:**

Loreto Patricio Jr. was shot dead in the evening of 7 August 1984 at Barangay Dayhagan, Pilar, Capiz. For this death Romeo Ledesma alias Juan Ledesma, his brother-in-law Fernando Bernal and a John Doe were charged with murder. However, as may be explained immediately hereunder, only accused Ledesma was tried and thereafter sentenced to reclusion perpetua and to indemnify the heirs in the amount of P50,000,000.00.[1]

Romeo Ledesma pleaded not guilty upon arraignment. Fernando Bernal who was bonded did not appear. The third accused remained a John Doe as he was never identified. Fernando died pending trial.[2]

As culled from the evidence, on 7 August 1984, at around seven-thirty in the evening, while Loreto Patricio Sr. and his family were resting from a day's work and listening to the radio their dogs suddenly barked. Responding to the perturbing noise outside, Loreto Patricio Jr. went down the house followed by his father Loreto Patricio Sr. and brother Edilberto Patricio, whose house was just ten (10) meters away. They proceeded to the trol [3] each with a sandoko [4] tucked to his waist. On their way they saw Fernando Bernal and Romeo Ledesma, whom they had known for nineteen (19) years, prowling in the premises. A little farther they noticed a man pulling their carabao by the rope. Romeo Ledesma and Fernando Bernal were each armed with a pugakhang.[5] As the Patricios drew near, Fernando Bernal fired. No one was hit. After some three (3) seconds Romeo Ledesma also fired, this time hitting Loreto Jr. which caused the latter to stagger and fall. All three (3) accused then fled leaving the carabao behind. Loreto Sr. and Edilberto pursued them but failed.[6]

Loreto Patricio Jr. died in the emergency room of the Capiz Emmanuel Hospital. His cadaver was autopsied by Dr. Florentino Bermejo who reported the cause of death as severe hemorrhage due to gunshot wounds.[7]

The killing was reported the following day by the Patricios to the municipal authorities. Fernando Bernal was arrested on 14 August 1984 and Romeo Ledesma on 5 December 1984.

Romeo Ledesma invokes alibi for his defense. He claims that in the evening of 7 August 1984 he was at home at Barangay Cawayan, Carles, Iloilo, about one and one half (1-1/2) kilometers from the house of Loreto Patricio Sr. at Barangay Dayhagan, Pilar, Capiz; he was with his wife Merlinda and their four (4) children together with two (2) neighbors attending the wake of his son who drowned on 4 August 1984; there were other people outside his house although he did not know them then. He insists that he never left his house that night until the following day.[8]

Accused-appellant contends in this appeal that the court a quo erred: (a) in giving weight to the testimonies of prosecution witnesses Loreto Patricio Sr. and his son Edilberto; (b) in convicting him of murder despite the fact that his guilt has not been proved beyond reasonable doubt; and, (c) in appreciating the qualifying circumstance of

treachery.

Accused-appellant argues that the testimonies of Loreto Patricio Sr. and Edilberto are highly doubtful, especially as regards their alleged positive identification of him as the killer, considering that despite the third-quarter moon visibility was obstructed by growing trees.

As did the trial court, we find the argument flawed. While there may have been trees around the crime scene the defense failed to establish that the area near the torel was so dark as to preclude the identification of the accused. It has been clearly established that appellant and his cohorts were caught by the Patricios in the act of stealing their carabao. If they had not been recognized, purportedly because they were able to hide, there would have been no need for them to fire at the Patricios. But appellant and Bernal fired two (2) shots in rapid succession, the second hitting Loreto Patricio Jr. which caused his death. The act of firing at the Patricios simply confirmed that they were indeed recognized.

In an attempt to discredit the Patricios, appellant claims that he was not included among the suspects in the police blotter but his son Romeo Ledesma Jr.[9] However, entries in the police blotter are not evidence of the truth of what are stated therein but merely of the fact that such entries were made. Besides, the police blotter speaks of "suspects" in the slaying of Loreto Patricio Jr. which can in no way prevail over the positive identification of appellant as the one who fired the fatal shot. Testimony given in open court is commonly more lengthy and detailed than the brief entries made in the police blotter.[10]

Appellant likewise refers to certain inconsistencies in the testimonies of the prosecution witnesses which, according to him, cast serious doubt on their truthfulness and notes the alleged disparities regarding the shape of the moon that fateful night, the time interval between the two shots, and the distance between him and the Patricios before the shooting started. But such inconsistencies are to be expected of witnesses testifying on the same incident as different persons may have diverse perceptions or recollections of a particular event. It is well-settled that as long as the witnesses concur on material points slight deviations in their recollection of details will not detract from the essential veracity of their assertions. The inconsistencies and contradictions, if any there be, do not necessarily impair credibility; they in fact enhance it as they erase any suspicion of a perjured or rehearsed testimony.[11]

Appellant would impress us that during the entire evening of 7 August 1984 he was in his house at Barangay Cawayan, Carles, Iloilo, with his family and neighbors, and never left the place at all until the following day. However, he failed to convince us that it was impossible for him to be at the locus criminis at the time of the killing.[12] The house of the victim at Barangay Dayhagan, Pilar, Capiz, is only one and a half (1-1/2) kilometers from the adjoining Barangay Cawayan, Carles, Iloilo, where appellant resides. Strangely, only his wife attested to his alibi which, it has been held, is generally unavailing if it is corroborated merely by immediate relatives and not by disinterested persons.

In fact he could have easily presented witnesses from among disinterested parties. Anyway, alibi is worthless in the face of positive identification by the prosecution witnesses.[13]

But, did not appellant admit on cross-examination that his son was buried on 5 August 1984 or two (2) days before the killing took place?[14] Verily, this should destroy whatever is left of his pretension that on the night of the incident he was at home with his family and friends attending the wake for his son. All told, we find that the prosecution has convincingly proved its case against appellant and established beyond reasonable doubt his culpability relative to the death of Loreto Patricio, Jr.

Nonetheless, we agree with the appellant that the trial court erred in finding that treachery attended the killing. For

treachery to be present, two (2) conditions must concur: (a) employment of means of execution that would give the person attacked no opportunity to defend himself much less retaliate; and (b) that said means of execution were deliberately and consciously adopted.[15] In the present case, there is no question that when the Patricios heard their dogs barking at the direction of the carabao corral they sensed danger. Thus they brought along their bolos when they went down their house and walked towards the corral. There they saw appellant Romeo Ledesma, Fernando Bernal and unidentified man pulling their carabao, each carrying a pugakhang. Seeing the intruders armed must have forewarned the Patricios that their lives were in grave peril. In other words, they were afforded a chance, albeit fleeting, to retreat or defend themselves. Hence, it cannot be said with utmost certainty that appellant and his companions deliberately chose treacherous means to insure the attainment of their objective without risk to themselves. As we view it, the killing of Loreto, Jr. was made on the spur of the moment and only when the accused lost their composure after having caught in the act stealing a carabao. Consequently, as the killing was not attended by any of the aggravating circumstances qualifying it to murder, accused-appellant should only be liable for homicide.[16]

The penalty for homicide is reclusion temporal the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the maximum of the penalty to be imposed shall be taken from the medium period of reclusion temporal, the range of which is fourteen (14) years eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is prision mayor, the range of which is six (6) years and one (1) day to twelve (12) years, in any of its periods.

WHEREFORE, accused-appellant Romeo Ledesma alias Juan Ledesma is found guilty beyond reasonable doubt of the crime of homicide, instead of murder, and is accordingly sentenced to an indeterminate prison term of eight (8) years four (4) months and ten (10) days of prision mayor medium, as minimum, to fourteen (14) years eight (8) months and twenty (20) days of reclusion temporal medium, as maximum. In all other respects, the judgment appealed from is AFFIRMED.

Costs against accused-appellant.

### **SO ORDERED.**

Padila, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Hermosisima, Jr., J. concurs and dissents.

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[1] Decision penned by Judge Ramon B. Posadas, RTC, Br. 17, Roxas City; Records, pp. 463-473.

[2] See Certificate of Death showing Fernando Bernal died 25 April 1988; Records, p. 444.

[3] A carabao corral.

[4] A bolo.

[5] A homemade shotgun; TSN, 18 May 1987, pp. 5-6, 14-15, 20.

[6] Id., pp. 6-8.

[7] Exh. "B," Records, p. 4.

[8] TSN, 16 May 1989, pp. 4-6.

[9] TSN, 27 March 1990, pp. 4-5.

- [10] *People v. Cabuang*, G.R. No. 103292, 27 January 1993, 217 SCRA 675.
- [11] *People v. Enriquez*, G.R. No. 102955, 22 March 1993, 220 SCRA 325.
- [12] *People v. Cabuang*, G.R. No. 103292, 27 January 1993, 217 SCRA 675; *People v. Suitos*, G.R. No. 85951, 24 March 1993, 220 SCRA 419; *People v. Crisostomo*, G.R. No. 85434, 17 May 1993, 222 SCRA 93.
- [13] *People v. Cortes*, G.R. No. 105010, 3 September 1993, 226 SCRA 91.
- [14] TSN, 16 May 1989, p. 15.
- [15] *People v. Bernardo*, G.R. No. 971-41-42, 24 May 1993.
- [16] *People v. Selveron*, G.R. No. 102079, 22 November 1993, 228 SCRA 92.

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## CONCURRING AND DISSENTING OPINION

### HERMOSISIMA, JR., J.:

With all due respect to the majority opinion, while I fully agree that the evidence on record has sufficiently established that accused-appellant Romeo Ledesma perpetrated the act of killing the victim Patricio, Jr., I am of the view that the killing was attended by the aggravating circumstance of treachery that should qualify the crime committed from one of homicide to that of murder.

For treachery to be appreciated, it is necessary (1) that, at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[1]

It has to be conceded that, as to the first requirement, the established facts of the case show that the victim was defenseless at the time he was killed. It matters not that the victim had a bolo tucked to his waist. Nowhere in the record does it appear that the victim was actually able to make use of said bolo during or immediately preceding the attack on him by accused-appellant. The attack was sudden and unprovoked. The victim was totally unsuspecting of the grave peril to his person. He, his father and brother, had simply gone down the house to verify as to why the dogs were barking. That they were shot at when so doing only goes to show that the accused had intended to shoot whoever comes to thwart their act of robbery. The accused immediately opened fire at the victim and the victim's companions, hitting the victim fatally.

Under these circumstances, it can be validly concluded that the victim and his companions were not afforded a fair chance to effectively defend themselves. The suddenness of the attack, without the slightest forewarning thereof, placed the victim and his companions in such a position that they could not have defended themselves from the aggression, taking into consideration the superiority of weapons of the malefactors and the suddenness of the attack upon the victim who could not have put up a defense even if he wanted to.

The existence of the second requirement, that is, whether the accused-appellant consciously adopted the particular means employed in killing the victim, is evident from the fact that accused-appellant and his cohorts conveniently provided themselves with home-made guns and took advantage of nighttime in waylaying the persons who might be minded to stop them from stealing the carabao of the victim. It could be fairly deduced from the attendant circumstances that, even prior thereto, the accused-appellant and his companions were grimly determined to insure with impunity the success of their unlawful objective, the very reason why they armed themselves with guns and purposely sought the night to pursue their evil deeds.

In point of fact, it being obvious that there was conspiracy among the malefactors to commit robbery and the killing of the victim was perpetrated pursuant to or on the occasion of robbery, the crime committed was robbery with homicide.

IN VIEW OF THE FOREGOING, I VOTE for the affirmance in toto of the decision appealed from.

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[1] REYES, REVISED PENAL CODE, Book I, 1981 Edition, p.420.

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