

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDMUNDO GOMEZ Y FRANCISCO, DEFENDANT-APPELLANT.

G.R. No. 106344. January 06, 1994

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Edmundo Gomez y Francisco was charged with the commission of Qualified Illegal Possession of Firearms and Ammunitions with Homicide (Sec. 1. Par. 2, P.D. No. 1866), in an information reading as follows:

That on or about the 16th day of December 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously have in his possession and under his custody and control a firearm, to wit: one (1) home-made shotgun (sumpak), further, said accused did then and there, willfully, unlawfully and feloniously shoot with said home--made shotgun (sumpak) one JUN DIVINA Y SURANTOS hitting him on the different parts of his body, thereby inflicting upon him serious and mortal wounds which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said victim in such amount as may be awarded under the provisions of the Civil Code.

(p. 1, Record)

After trial, the trial court, on June 5, 1992 rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds accused EDMUNDO GOMEZ y FRANCISCO GUILTY beyond reasonable doubt of the crime charged and hereby sentences him to suffer a penalty of reclusion perpetua.

In addition, accused is ordered to pay the heirs of Jun Divina y Surantos the sum of P50,000.00 by way of indemnity. With costs against the accused.

(pp. 76-77, Record.)

Accused-appellant appealed upon the following assignment of errors:

I. The trial court erred in not giving weight to accused's defense of alibi and denial, it being improbable for him to commit the crime charged.

II. The trial court erred in finding accused guilty beyond reasonable doubt of the crime charged.

(p. 37, Rollo.)

The facts of the case, as fairly established by the evidence and as correctly and concisely summarized by the Office of the Solicitor General in its brief, are as follows:

About 7:00 o'clock in the evening of December 16, 1989, deceased victim Jun Divina, Rolando Arquiza, Ronnie Pesquesa and Wilson Juliano were drinking in a store located at Ibaba, Filinvest II, Batasan Hills, Quezon City (TSN, May 31, 1990, p.2).

A while later, appellant Edmundo Gomez, whom eyewitness Rolando Arquiza described as wearing jeans (maong pants) with white shirt, arrived together with Arturo Legaspi and Jimmy Salazar at the store and joined the victim's group in their festive drinking session. But the mood changed, however, between appellant and the victim, who refused the glass of gin offered to him by appellant; apparently, since his arrival, appellant detested ("nakursunadahan") the presence of the victim. Suddenly, appellant punched the victim, hitting him below his right ear. The victim retaliated but merely hit appellant's shoulder. Appellant immediately ran away (TSN, May 31, 1990, pp. 4-7).

Appellant returned not long thereafter, armed with a home made shotgun (sumpak), and from outside the store, fired and hit the victim's back. The victim, wounded, fell on the ground even as appellant again ran away. Arquiza and his companions immediately went to the aid of the wounded victim and made him stand up by placing his arms over their shoulders (TSN, May 31, 1990, pp. 4-7)

But when they were about two (2) meters from the victim's bunkhouse, appellant who was still armed with the "sumpak", reappeared. Arquiza and others, seeing the armed appellant, immediately scampered for safety, leaving the wounded victim alone, slumped face down on the ground. Appellant then went over the slumped victim, kicked his body three (3) times, stepped on victim's head, and fired point blank at the victim's body, killing him instantly. This incident which occurred near a well-lighted construction site was witnessed by Angel Cesario, a construction worker, from a window inside one of the bunkhouses (TSN, May 29, 1990, pp. 5-8).

Appellant by then, who was about to escape, was arrested in possession of the "sumpak" by some security guards from nearby firms, who had responded after hearing the gunshots. Appellant, along with the confiscated home-made shotgun (sumpak), a live ammunition, and a spent shell (Exhibits H, I, and J), was later turned over to the Quezon City Police.

Dr. Dario L. Gajardo testified that he conducted on December 17, 1989 the postmortem examination on the victim and issued the autopsy report (TSN, May 21, 1990, pp. 2--3). The victim sustained the following injuries:

HEAD AND TRUNK

- (1). Multiple abrasions, frontal region, measuring 7 by 6 cm, 3 cm right of the anterior midline, with superimposed lacerated wound, measuring 3 by 1 cm.
- (2). Multiple abrasions, face, measuring 8 by 7 cm, crossing the anterior midline, 2 cm to the left and 5 cm to the right.
- (3). Area of eight (8) gunshot wounds, point of entry, left scapular region, measuring 0.6 by 0.7 cm, 7 cm from the posterior midline; 0.7 by 0.7 cm by 0.7 cm, 6 cm from the posterior midline, 0.7 by 0.7 cm, 7 cm from the posterior midline, 0.7 by 0.7 cm, 6 cm, and 0.7 by 0.7 cm, 6 cm, from the posterior midline, all with a uniform abraded collar, measuring 0.1 cm, directed anteriorwards and medialwards, fracturing the 4th and 5th left thoracic ribs, lacerating the pericardial sac, right ventricle of the heart and both lobes of the left lung, with seven (7) pellets recovered at the left costal region and one (1) pellet recovered at the pericardial cavity.
- (4). Gunshot wound, point of entry, right costal region, measuring 0.6 by 0.7 cm, 21 cm from the anterior midline with tattooing, measuring 8 by 4 cm and an abraded collar, measuring 0.2 cm inferiorly and laterally, 0.1 superiorly and medially directed upwards and medialwards, passing thru the 6th right intercostals space, fracturing the 1st right thoracic rib, lacerating all lobes of the right lung, making a point of exit at the right infraclavicular region, measuring 2.5 by 1 cm, 2 cm from the posterior midline. One thousand eight hundred (1,800) cc of blood and blood clots accumulated at the thoracic cavity.

CONCLUSION:

Cause of death is cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wounds in the

trunk.

Dr. Gajardo corroborated and confirmed the testimonies of eyewitnesses Arquiza and Cesario that the gunshot wounds sustained by the victim were fired by an assailant from behind (tsn, May 29, 1990, p. 3).

(pp. 3-7, Appellee's Brief; pp. 74--78, Rollo.)

Accused-appellant decries the testimony of prosecution witness Rolando Arquiza, asserting that Arquiza did not see accused-appellant in possession of the sumpak or home-made gun and citing the following testimony of Arquiza:

Q:

And when the accused in this case together with his companion arrived, you already saw the sumpak in his possession?

A:

Not yet, sir.

(p. 4, t.s.n. May 31, 1990)

The cited testimony does not support the assertion of accused-appellant, for said portion of the testimony of Arquiza merely conveys the fact that at the time accused-appellant entered the store (where the victim and his companions were in the process of getting drunk) he was not yet carrying the sumpak. Later in his testimony, Arquiza declared that after the victim hit accused-appellant with a fist blow, accused-appellant ran outside the store, got the sumpak in a pathway, and returned and shot the victim at the back. Of course, accused-appellant also derides the testimony of Arquiza that it took accused-appellant only five seconds to get the gun and to return to the store. We find nothing incredible in this testimony, for the pathway from where accused-appellant got the sumpak was only 2 meters away from the store (p. 5, tsn, May 31, 1990).

Further, accused-appellant brands as hearsay the testimony of Patrolman Rolando V. Maniquiz that the home-made shotgun or sumpak allegedly used by accused-appellant in the commission of the crime was turned over to the witness by the security guard.

The contention is wanting in force as well as logic. Maniquiz did not testify that the sumpak was used by accused-appellant in shooting the victim; he merely testified that the sumpak was turned over to him by the security guards without in anyway mentioning that it was the firearm used by accused-appellant in killing the victim. Verily, it should be the testimony of the two eye witnesses who testified that accused-appellant shot the victim with a home-made shotgun or sumpak which should occupy the attention of accused-appellant. Prosecution witness Rolando Arquiza categorically testified that accused-appellant shot the victim with a sumpak (pp. 2-3, t.s.n., May 31, 1990), even pointing out the sumpak in court. Likewise, prosecution witness Angel Cesario positively testified that accused-appellant shot the victim with a sumpak and, in addition, declared that the security guards who apprehended the accused-appellant seized from him the sumpak (pp. 5-6, t.s.n., May 29, 1990). And there is absolutely no reason or motive, and none appears on record, why the security guards would exchange the sumpak they seized from accused-appellant with another when they turned over the same to Pat. Maniquiz.

The only defense interposed by accused-appellant is denial. He testified that while he and the victim and the latter's companions were having a drinking session, he was hit in the face by somebody whom he did not recognize, felling him; and while he was down on the floor, he heard a gunshot and he thereupon immediately fled towards his house; but along his way home he was apprehended by security guards who mauled him, by

reason of which he was treated at the Hospital ng Bagong Lipunan at East Avenue (pp. 5-8, t.s.n., September 6, 1990).

Denial is a feeble defense which cannot stand against the positive testimony of eye witnesses and constitutes a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declarations of credible witnesses who testify on affirmative matters (People vs. Viray, 164 SCRA 135 [1988]; People vs. Sariol, 174 SCRA 237 [1989]). Prosecution witnesses Rolando Arquiza and Angel Cesario testified in a forthright and categorical manner and their declarations are unblemished by inconsistencies, contradictions, and fabrications. Both testified that accused-appellant shot the victim at the back, with Arquiza testifying that accused-appellant shot the victim at the store where they were having a drinking session and with Cesario testifying that accused-appellant shot the victim while the victim was lying face down near the bunkhouse. The possibility of mistaken identification is nil, considering that Arquiza, accused-appellant, the victim, and several other companions were drinking in a well-lighted store. Moreover, Arquiza and Cesario were only five meters away from accused-appellant when the shooting occurred (p. 4, TSN, May 31, 1990; p. 6, May 29, 1990). Then too, the declarations of Arquiza and Cesario found corroboration in Dr. Dario Gajardo's autopsy report that the gunshot wounds of the victim were at his back (p. 3, t.s.n., May 29, 1990; Exhs. C and D).

In the final analysis, the basic issue is one of credibility of witnesses as assessed by the trial court. This Court has consistently adhered to the policy that the findings of fact of the trial court shall not be disturbed on appeal unless the trial court has overlooked, ignored, or disregarded some fact or circumstance of sufficient weight or significance which, if considered, would alter the situation.

This Court accords respect to the factual findings of the trial judge, who has the opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies. The witnesses reveal much when they testify that is not reflected in the transcript, which only records what they said but not how they said it. The meaningful pause, the ready reply, the angry denial, the elusive eyes or the forthright stare, the sudden pallor when a lie is exposed or the flush of face that accentuates a sincere assertion - these and many other tell-tale marks of honesty or invention are not lost on the trial judge. It is for this reason that his factual findings are generally not disturbed by the appellate court unless they are found to be clearly biased or arbitrary. They are not so in the case at bar. (People vs. Yadao, 216 SCRA 1, 7 [1992]).

We have painstakingly sifted through the evidence and have found no such fact or circumstance.

The prosecution having conclusively shown that accused-appellant killed the victim with an unlicensed firearm (Exh. K), the trial court, therefore, did not err in finding him guilty, as charged, of violating Section 1 of Presidential Decree No. 1866, which pertinently reads:

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

The trial court, needless to say, properly reduced the penalty to reclusion perpetua.

WHEREFORE, the decision under review is hereby **AFFIRMED**, with costs against accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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