

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN DULOS, DEFENDANT-APPELLANT.

G.R. No. 107328. September 26, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In Criminal Case No. 1114 of the Regional Trial Court of Cotabato City, Branch 13, Efren Dulos was charged with murder allegedly committed in this wise:

That on or about March 15, 1987, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .45 pistol, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot with firearm one Apolinario Tamse, thereby inflicting upon the latter mortal wounds which caused his death.

CONTRARY TO LAW.[1]

On arraignment held on March 9, 1988, accused pleaded not guilty to the offense charged.[2]

After examining and assessing the evidence respectively adduced by the prosecution and the defense, the trial court found Efren Dulos guilty beyond reasonable doubt of the crime of murder and was accordingly adjudged as follows:

WHEREFORE, the Court finds the accused Efren Dulos guilty beyond reasonable doubt of the crime of Murder committed with treachery, as charged in the Information and hereby sentences him to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of the victim the amount of P50,000.00.

SO ORDERED.[3]

The operative facts of this case are as follows:

At around ten o'clock in the evening of March 15, 1987, Susan Almazar and Alice Tipudan, both professional entertainers, were sitting at the lobby of the New Imperial Hotel in Cotabato City, waiting for prospective clients.[4] Moments later, a certain Mr. Gara, a Military Police assigned at the said hotel as watchman, approached them and told them that the accused-appellant, Efren Dulos, had some male guests who wished to be entertained.[5] Thereafter, they were introduced to herein accused-appellant. Both parties agreed to a charge of P100.00 each for Susan and Alice as fee for their services.[6]

The parties then proceeded to the Sampaguita Disco located at the Old Imperial Hotel to join the accused-appellant's guests.[7] Alice Tipudan left early and decided to wait for Susan Almazar at the lobby of the New Imperial Hotel.[8]

Apparently, Susan, who stayed until midnight to entertain accused-appellant, decided to check in with one of the latter's guests at the upper floor of the disco house for an additional fee of P500.00.[9] When she received the

money, she changed her mind, thus, spawning a fight with her customer.[10] When Alice learned of the disagreement, she requested MP Gara to intervene and buy peace.[11]

In the meantime, Susan came down to the lobby of the Imperial Hotel to meet her boyfriend, Apolinario “Paul” Tamse[12] who was waiting for her. Upon hearing about the reneged deal, the irate accused-appellant confronted Susan and Paul.[13] Paul apologized to the accused-appellant saying that his girlfriend does not accept intimate dates.[14] Then, they, together with Alice and another female companion, proceeded to go home to the Federal Lodging House which was only a few meters away from the hotel.[15]

Accused-appellant, angered by the aforesaid incident, quickly followed the group.[16] Upon noticing the accused-appellant who then drew his .45 caliber pistol, Alice shouted a warning of the threat to Susan and Paul, who were walking ahead.[17] They tried to run but they were overtaken by the accused-appellant.[18] Accused-appellant demanded the return of his money. Susan handed the P100.00 to accused-appellant, at the same time shielding Paul with her body.[19] She denied having received P500.00 from accused-appellant’s guest lest her boyfriend would find out that she agreed to check in with a customer.[20] Susan pleaded with the accused-appellant not to hurt them and upon seeing the latter’s gun still pointed towards them, she tried to grapple with him for possession of the same[21] but she was violently pushed.[22] She fell to the ground.[23] At this juncture, Paul pleaded for mercy by kneeling down and raising both his hands up.[24] His plea fell on deaf ears as accused-appellant fired his gun hitting Paul on the left breast.[25] Paul fell face down to the ground. Accused-appellant then fired another shot at Paul’s back, killing him on the spot.[26]

The autopsy conducted on the victim revealed the following findings, viz:

1. Wound with smooth edges at the chest along the left anterior clavicular line at the level of the 4th intercostal space;
2. Wound with rough edges just above the left nipple;
3. Wound with smooth edges at the left palm;
4. Wound with rough edges at the posterior portion of the base of the left thumb; and
5. Wound with smooth edges at the post axillary line 3 inches below the armpit.

CAUSE OF DEATH:

Cardio-Respiratory Arrest Secondary to Massive Hemorrhage due to gunshot wounds.[27]

Accordingly, accused-appellant was charged with murder. After arraignment where he pleaded not guilty, accused-appellant was tried and found guilty of the crime charged as previously stated.

Now before us on appeal, accused-appellant raises the following assignment of errors, to wit:

- I. THE TRIAL COURT ERRED IN ASSUMING JURISDICTION OVER PERSON OF APPELLANT, A MEMBER OF THE AFP AT THE TIME OF THE INCIDENT;
- II. THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF MURDER AND NOT HOMICIDE AND SENTENCING HIM TO RECLUSION PERPETUA DESPITE THE SUDDENNESS OF KILLING AND PROOFS OF UNLAWFUL AGGRESSION ON THE PART OF THE DECEASED AND LACK OF SUFFICIENT PROVOCATION ON THE PART OF APPELLANT AND THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER; and
- III. THE TRIAL COURT ERRED IN NOT CONSIDERING SELF-DEFENSE OR AT LEAST INCOMPLETE SELF-DEFENSE IN FAVOR OF APPELLANT.[28]

The appeal lacks merit.

In his first assigned error, accused-appellant contends that the trial court did not acquire jurisdiction to try him, hence, the decision rendered against him should be declared null and void. He vigorously claims that as a member of the 12th MSSU AFP (Military Southern Support Command, Armed Forces of the Philippines), he should be tried by the military courts pursuant to Presidential Decree No. 1850, and not by civil courts.

Section 1 of Presidential Decree No. 1850, as amended by Presidential Decree No. 1952, reads in full:

SECTION 1. Court-Martial Jurisdiction over Integrated National Police and Members of the Armed Forces.- Any provision of law to the contrary notwithstanding - (a) uniformed members of the Integrated National Police who commit any crime or offense cognizable by the civil courts shall henceforth be exclusively tried by courts-martial pursuant to and in accordance with Commonwealth Act No. 408, as amended, otherwise known as the Articles of War; (b) all persons subject to military law under Article 2 of the aforementioned Articles of War who commit any crime or offense shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War; Provided, that, in either of the aforementioned situations, the case shall be disposed of or tried by the proper civil or judicial authorities when court-martial jurisdiction over the offense has prescribed under Article 38 of Commonwealth Act Numbered 408, as amended, or court-martial jurisdiction over the person of the accused military or Integrated National Police personnel can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached before hand unless otherwise provided by law: Provided further, that the president may, in the interest of justice, order or direct, at any time before arraignment, that a particular case be tried by the appropriate civil court. (Emphasis ours)

While it is true that the foregoing provision vests exclusively upon courts-martial trial of criminal offenses committed by members of the Armed Forces of the Philippines, whether or not done in the actual performance of their official duties, accused-appellant's case falls under the exception contained in the proviso of the section which allows civil courts to assume jurisdiction over criminal offenses and over the person of the accused where the latter was discharged from active military service without military jurisdiction having duly attached on him before his separation.

In the case at bench, accused-appellant himself concedes that he was readily discharged from active military service as soon as he was made to answer for the criminal offense without any initiative on the part of the military to try and prosecute him for the offense charged. Verily, it was the civil court which first acquired jurisdiction over his person.

In an attempt to elude civil court jurisdiction, accused-appellant seeks refuge in the case of *Abadilla v. Ramos*.^[29] Said case, however, cannot apply here. In *Abadilla*, Colonel Rolando Abadilla was dropped from the roll of officers for his alleged participation in several criminal offenses. Before his separation from the service, however, Abadilla was subjected to military investigation, hence, military jurisdiction had fully attached on his person. In contrast, when accused-appellant was discharged from the service, no initiatory proceedings nor any investigation were conducted, consequently, military jurisdiction did not attach on his person.

Besides, records reveal that the issue of jurisdiction was not raised by the accused-appellant in the trial court. Such being the case, raising it at this point would be useless and futile. It is well settled that when the question of jurisdiction over the person was not raised in the trial, the same cannot be belatedly raised on appeal, thus, in *People v. Lozano*,^[30] we held that:

The record shows that the issue of jurisdiction in the trial court was not raised by the accused-appellant *Lozano*, so much so that if the issue be raised at this point in time it would be useless and futile because the question of jurisdiction over the person which was not raised in the trial court cannot be raised on appeal (*Vda. de Alberto v. Court of Appeals*, 173 SCRA 436 [1989]).

Besides, a party is estopped from assailing the jurisdiction of a court after voluntarily submitting himself to its jurisdiction (*Tejones v. Gironella*, 159 SCRA 100 [1988]). Accused-appellant Lozano's appearance in the arraignment and pleading not guilty to the crime charged, is a sign that he voluntarily submitted himself to the jurisdiction of the court, so that jurisdiction has been acquired by the court over his person and continues until the termination of his case.

In the second and third assigned errors, accused-appellant questions the findings of fact of the court a quo. However, as we have consistently ruled in a long line of cases, findings of the trial court as to credibility of witnesses are accorded great weight and respect by the appellate court.[31] Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have altered the outcome of the case, the appellate court will not disturb the factual findings of the lower court.[32]

Accused-appellant disputes the trial court finding that the killing was committed in a treacherous manner. He maintains that the horizontal trajectory of the bullet wound and the fact the victim was facing him when the gun was discharged, negate the existence of treachery.

We are not persuaded.

There is treachery when the victim is shot, albeit frontally, with his hands raised to show that he would not fight, or because of fright, or to try to ward off the shots that were to come.[33] This circumstance constitutes treachery because the victim was clearly in a defenseless position. In the case at bench, the prosecution eyewitnesses Susan Almazar and Alice Tipudan, categorically testified that when the accused-appellant fired his first shot, Paul Tamse was on his knees with his hands up pleading for mercy.[34] Evidently, the victim was in a defenseless position when accused-appellant shot him. While the victim was already lying prostrate on the ground in prone position, accused-appellant pumped one more bullet on his back. This constituted treachery and qualified the offense to murder.

Accused-appellant's lengthy argument on the absence of the qualifying circumstance of evident premeditation in the commission of the crime serves no purpose as the trial court never considered such circumstance against him. In fact, the trial court declared that the prosecution failed to establish and prove the existence of the said qualifying circumstance. Thus:

From the facts as determined by the court, the court is of the view that the prosecution failed to establish the qualifying circumstance of evident premeditation as alleged in the information. It failed to establish that the criminal act of shooting the deceased with a handgun was preceded by cool thought and reflection on the part of the accused to carry out such a criminal intent to kill within a space of time sufficient to arrive at a calm judgment.[35]

The generic mitigating circumstance of voluntary surrender cannot be appreciated in accused-appellant's favor. In order that voluntary surrender may be appreciated, it is necessary that "it must be spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture." [36] Here, there was no conscious effort on the part of accused-appellant to voluntarily surrender to the military authorities when he went to Camp Siongco, Dinaig, Maguindanao after the fateful incident. As he himself admitted in his testimony, he was not placed under custody by the military authorities as he was free to roam around as he pleased. He declared:

Q. And no one was guarding you? In other words you can get in and out at the BOQ (Bachelor's Officers Quarters) at your will?

A. Yes, sir.

Q. You could even leave Camp Siongco at your will?

A. Yes, sir.[37]

Verily, he went to the said camp to take up residence, not to voluntarily surrender to the authorities. Likewise, his claim that he surrendered his 0.45 caliber pistol to a certain Major Bermones, one of his guests at the Old Imperial Hotel, is not substantiated by evidence. Assuming that the gun was surrendered, that fact cannot be appreciated in his favor. This Court in the case of *People v. Palo*[38] held that where an accused merely surrendered the gun he used in the killing, without surrendering his person to the authorities, there is no voluntary surrender.

Finally, accused-appellant avers that he shot Paul Tamse in self-defense. He contends that:

(1) There was unjust provocation on the part of the deceased when he refused to refund the P600 of the accused, and instead he and his girlfriend Susana Almazar tried to run away to avoid returning said amount;

(2) There was an unlawful aggression on the part of the deceased when he tried to grab the pistol of the accused, as earlier stated; and,

(3) There was reasonable necessity of the means used by the accused to repel or prevent the aggression.[39]

This contention is belied by the evidence adduced by the prosecution. In fact, accused-appellant did not present any evidence to sustain his plea of self-defense. Not only were the elements of self-defense absent, but the claim is likewise negated by the physical evidence.[40] The accused-appellant suffered no harm or injury physically. The number and nature of the wounds inflicted on the victim prove that the attack came from the accused-appellant and that the victim had no chance to defend himself as he was not armed at the time of the incident.[41] In addition, the victim never manifested a posture of belligerence. When he saw accused-appellant approaching him menacingly with a gun, Apolinario knelt down, raised his two hands and pleaded with accused-appellant to spare his life.

All told, we find no cogent reason to reverse the assailed judgment of conviction.

WHEREFORE, premises considered, the decision appealed from is **AFFIRMED** and the appeal **DISMISSED**.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Original Records, pp. 1, 3; Rollo, p. 4.

[2] *Id.*, at pp. 99, 101.

[3] Decision, p. 7; Original Records, p. 510; Rollo, p. 20; penned by Judge Emmanuel Badoy.

[4] TSN, August 17, 1988, pp. 4-5; TSN, August 18, 1988, pp. 6-7.

[5] *Id.*, at p. 6; *Id.*, at pp. 8-9.

[6] *Id.*, at pp. 7-10; *Id.*, at pp. 10-11.

[7] *Id.*, at pp. 8-9; *Id.*, at p. 11.

[8] *Id.*, at p. 10; *Id.*, at pp. 12-14.

[9] Original Records, p. 508; TSN, August 17, 1988, pp. 11-12.

[10] Ibid.

[11] TSN, August 18, 1988, pp. 14-16.

[12] TSN, August 17, 1988, p. 13.

[13] Id., at p. 15.

[14] Ibid.

[15] Id., at p. 14; TSN, August 18, 1988, pp. 18-19.

[16] Ibid., Id., at p. 19.

[17] Id., at pp. 16-17; Id., at p. 20.

[18] Ibid.; Ibid.

[19] Id., at p. 18; Id., at p. 21.

[20] Original Records, p. 508.

[21] TSN, August 17, 1988, p. 19; TSN, August 18, 1988, p. 21.

[22] Ibid.; Ibid.

[23] Ibid.; Ibid.

[24] Id., at p. 20; Id., at p. 22.

[25] Ibid.; Ibid.

[26] Ibid.; Ibid.

[27] Exhibit "A", Original Records, p. 14.

[28] Appellant's Brief, p. 1; Rollo, p. 43.

[29] 156 SCRA 92 [1987].

[30] 206 SCRA 234, 242 [1992].

[31] *People v. Villanueva*, 225 SCRA 353 [1993]; *People v. Toribio*, 198 SCRA 529 [1991]; *People v. Rosell*, 181 SCRA 679 [1990]; *People v. Sarol*, 139 SCRA 125 [1985]; *Dalida v. Court of Appeals*, 117 SCRA 480 [1982].

[32] *People v. Dela Torre*, 198 SCRA 663 [1991].

[33] *People v. Madali*, 188 SCRA 67 [1990]; *People v. Catipon*, 139 SCRA 192 [1985]; *People v. Ricohermoso*, 56 SCRA 431 [1974]; *People v. Castro*, 20 SCRA 543 [1967]; *People v. Lasafin*, 92 Phil. 668 [1953].

[34] TSN, August 17, 1988, p. 20; TSN, August 18, 1988, p. 22.

[35] Decision, pp. 6-7; Original Records, pp. 508--509.

[36] *People v. Devaras*, 205 SCRA 676, 695 [1992]; *People v. Gervacio*, 24 SCRA 960 [1968]; *People v. Sakam*,

61 Phil. 27 [1934].

[37] TSN, October 25, 1989, pp. 14-15.

[38] 101 Phil. 963 [1957].

[39] Rollo, p. 43; Appellant's Brief, pp. 14-15.

[40] *People v. Binondo*, 214 SCRA 764 [1992].

[41] *Ibid.*; *People v. Molina*, 213 SCRA 52 [1992].

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