

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADEO I. ACAYA, ACCUSED-APPELLANT.

G.R. No. 108381. March 07, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated November 9, 1992 of the Regional Trial Court of Batanes, Branch 13, in Criminal Case No. 591, convicting appellant of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the heirs of the victim the amount of P100,000.00 as moral damages and P50,000.00 as death indemnity, and to pay the costs.

Appellant, a 32 year-old soldier, was assigned to the former Philippine Constabulary - Integrated National Police (PC-INP) Command of Basco, Batanes. The victim was Efren V. Rodriguez, a 22 year-old farmer from Barangay San Joaquin, Basco, Batanes.

The facts are as follows:[2]

On the night of June 20, 1988, Angel Binalon held a baptismal party at his residence in Barangay Kayvaluganan, Basco, Batanes. Among the guests were Felipe Viola, Efren Rodriguez, Leon Vergara, Victor Cabilin. Viola's group was seated in one table, happily drinking and singing songs. At around 11:30 P.M., appellant arrived drunk and armed with an M-16 armalite (assault rifle). Appellant approached Viola's group shouting "Bata ako ni Honasan!" (I'm a follower of Honasan!). He cocked his armalite and fired one shot into the air. Everybody froze. Appellant walked up to Efren Rodriguez and shot him in the face. Rodriguez stood up, took a few steps and fell on the ground. Appellant went near Rodriguez and shot him again at the back. The people scampered. Viola tried to grab the gun from appellant but could not wrangle it free from appellant's strong grasp. After shooting Rodriguez, appellant walked towards the house of Jesus Batifora. Viola went home. After a short while, shots again rang in the air. Viola went back to see what was happening. He met appellant and tried to placate him by inviting him to his house. Appellant went with him. When they got to the house, appellant pointed his gun at Viola's wife. Fearing another incident, Viola advised Acaya to sit down. Acaya rested for a few moments then left.[3]

On January 31, 1989, the following Information[4] for murder was filed against appellant:

"That on or about the 20th day of June, 1988, in the municipality of Basco, Batanes, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with a deadly weapon, to wit: an M16 Armalite rifle with serial number 156322, with intent to kill, did then and there wilfully, unlawfully, suddenly, unexpectedly and treacherously attack and use personal violence upon one EFREN RODRIGUEZ, by then and there shooting him with said M16 Armalite rifle for two times, one on the face and another on the back, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

"All contrary to law, with the qualifying circumstances of Alevosia."

On September 13, 1989, upon arraignment, appellant entered a plea of not guilty.[5]

The prosecution presented two (2) witnesses: (1) Felipe Viola, a guest at the baptismal party and eyewitness to the shooting incident; and (2) Dr. Pedro Castillo, the medico-legal officer who conducted the autopsy on the victim.

Dr. Castillo testified that the victim sustained two gunshot wounds. Wound No. 1 entered near the lip and exited near the right ear. Wound No. 2 entered the left part of the back, near the spinal column and penetrated medially into the body causing multiple lacerations to the kidney, omentum and the liver. Metal fragments were found in the liver and the abdominal wall. Dr. Castillo found the cause of death as "massive loss of blood due to multiple lacerations of the liver and right kidney secondary to gunshot wounds." [6]

The defense, on the other hand, presented as witnesses appellant and his friend Jesus Batifora. Appellant admitted that he joined the party at around 3:00 P.M.. He claimed that he normally gets very drunk after consuming half a bottle of gin. Afterwards, he would not know what he was doing. He could not remember anything that transpired after 9:00 P.M.. He merely regained consciousness at around 5:00 A.M. when he was in the house of his girlfriend. He learned of the death of Rodriguez some two days later. [7]

Jesus Batifora testified that at around 11:30 of the night of the incident, he was awakened by appellant who requested permission to sleep in his house. Batifora agreed. However, when he saw appellant moving towards the room of his two daughters, he ordered appellant to leave the house. After an hour, Cabilin went to the house of Batifora to warn him that appellant was coming back with an armalite. Batifora met appellant and grabbed the latter's firearm. While they were grappling for possession of the firearm, appellant accidentally pulled the trigger and the gun fired, hitting Rodriguez. [8]

On November 9, 1992, the trial court rendered a decision, [9] the dispositive portion of which provides:

"WHEREFORE, based on the evidence adduced, this Court finds the accused Amadeo I. Acaya of Basco, Batanes, GUILTY beyond reasonable doubt, of the crime of MURDER, as charged, and sentences him to suffer an imprisonment of reclusion perpetua, including all the accessory penalties provided therefor by law.

The accused is also ordered to pay the heirs of the victim EFREN RODRIGUEZ:

- The sum of P100,000.00 as moral damages; and
- The sum of P50,000.00 as death indemnity, without subsidiary imprisonment in case of insolvency.

The accused is further ordered to pay the costs.

SO ORDERED.

Issued this 9th day of November, 1992 at Aparri, Cagayan, for Basco, Batanes."

Hence, the present appeal. Appellant contends that the trial court erred in - [10]

A. ... FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF MURDER.

B. ... HOLDING THE ACCUSED-APPELLANT LIABLE FOR MORAL DAMAGES IN THE AMOUNT OF P100,000.00.

Appellant assails the credibility of prosecution witness Viola considering that the latter, by his own admission, was quite drunk at the time of the shooting incident. Appellant argues that Viola's inebriated state surely affected his mental faculties to such an extent that his recollection of the incident was not only blurred but totally inaccurate. Further, appellant claims that the treachery did not attend the killing since the prosecution failed to

show that appellant consciously adopted the means, method, or manner of execution of the killing. Lastly, appellant assails the award of moral damages for lack of basis.

The Office of the Solicitor General, for the State, contends that the testimony of prosecution witness Viola, examined as whole, unerringly demonstrated his ability to clearly describe and fully communicate the details of the shooting incident. Viola's testimony is further corroborated by the medico-legal report as to the finding that the victim was shot at close range, a distance of one (1) foot or even closer. Moreover, Viola being a friend of appellant, had no improper motive to falsely testify against appellant. The OSG contends that treachery attended the killing considering that the suddenness and the mode of attack made it impossible for the victim to defend himself. The OSG concedes, however, that intoxication should be appreciated as a mitigating circumstance in favor of appellant.

The issues, therefore, center on the credibility of prosecution witness Viola, and the correct characterization of the crime committed by appellant.

When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[11] The rule admits of certain exceptions, namely: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence.[12] Neither exception can be found in this case. Moreover, the Court is not precluded from making its own assessment of the probative value of the testimony of the witnesses on the basis of the transcript of stenographic notes (TSNs) thereof.[13] Based on our review of the TSNs, we find no reason to depart from the factual findings of the trial court.

Although prosecution witness Viola took part in the drinking session, it was not proven that such intoxication totally deprived him of his powers of observation and mental faculties. The testimony of Viola appears credible and is replete with details as to the commission of the crime, i.e. the weapon used, manner of attack, the location of the bullet wounds. More importantly, his testimony is corroborated by the medical findings, particularly as to distance of the assailant and the location of the gunshot wounds. Indeed, if appellant accidentally fired the armalite, the victim would not have sustained gunshot wounds both on his face and at his back. As correctly observed by the trial court -

"... The court does not believe Batifora went down his house to meet Acaya who was armed with a rifle. When Batifora knew that he was the target of Acaya because of the incident between them in Batifora's house an hour before, would Batifora, unarmed still dare to meet Acaya especially so when he (Batifora) already heard the gun report? Batifora's claim that he and Acaya grappled for Acaya's gun that led to the accidental shooting of Rodriguez, is unbelievable and improbable. It is also contrary to the physical evidence on the injuries or wounds inflicted in the face and in the back of Rodriguez as testified to by Dr. Castillo. The gunshot wound in the face of Rodriguez was inflicted with the muzzle of the gun positioned about one foot or closer to the face, as indicated by the black spots or powder burns found in the face, and the gunshot wound at the back was also inflicted with the gun positioned about three feet to the body of the victim (see t.s.n., June 19, 1992, page 25) who was then in prone position. The wound in the face had an upward trajectory entering near and at right angle to the mouth and exited at the face near the right ear (see t.s.n., September 16, 1992, page 18). Batifora claims that Rodriguez was about four and a half meters to where Acaya and Rodriguez were grappling for the gun (see tsn, September 16, 1992, page 31). The powder burns found in the face of the victim belies the version of Batifora. Furthermore, the wound in the face was inflicted frontally while the wound at the back was inflicted from behind. Hence, the two gunshot wounds could not be inflicted by successive shots from one direction." [14]

Thus, in *People v. Basco*, [15] we likewise debunked appellant's claim of accidental firing considering that the

victim sustained three gunshot wounds. We held therein that the location and presence of several gunshot wounds on the body of the victim is physical evidence that eloquently refutes appellant's allegation of accidental firing.

Further, the record is bereft of any evidence that Viola had improper motives to testify falsely against appellant. Thus, we adhere to the established rule that absent evidence showing any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and his testimony is thus worthy of full faith and credit.[16]

In contrast, appellant, during his testimony, merely replied "I don't know or I do not remember" to almost all of the questions propounded to him.[17] When confronted with his counter-affidavit (Exh. "I") stating that he was grappling with Batifora when he accidentally shot the victim, appellant admitted his signature therein, but denied any knowledge of the contents thereof.[18] In this connection, we advert to the following observation in *People v. Ganan, Jr.*, 265 SCRA 260, 287 (1996)[19] -

"The experience of courts and the general observation of humanity teach us that the natural limitations of our inventive faculties are such that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.

For this reason it will be found that perjurers usually confine themselves to the incidents immediately related to the principal fact about which they testify, and when asked about collateral facts by which their truthfulness could be tested, their answers not infrequently take the stereotyped form of such expression as 'I don't know' or 'I don't remember.'"

As to appellant's claim that he totally blacked out, we sustain the following observation by the trial court - [20]

"Analyzing the defense of Acaya, it appears very improbable. He claims he was so dead drunk that he did not know what transpired after 9:00 o'clock that evening in the party because he drunk about two bottles of gin. He only came to his senses when he woke up at 5:00 o'clock the following morning in the house of his girlfriend at Kaychanarianan, Basco, about three kilometers from the place of the baptismal party. Would one believe that if Acaya was dead drunk he could still walk three kilometers and find his way to his girlfriend's house, yet he couldn't remember what happened in the party? This story is incredible to this Court."

We find, however, that the qualifying circumstance of treachery was not sufficiently proven. Qualifying circumstances must be indubitably proven as the crime itself.[21] As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat.[22] While the attack on the victim was sudden, it does not appear from the evidence that appellant consciously adopted the means, method or manner of attack on the victim. Hence, there being only one qualifying circumstance alleged in the information, and none being proven, appellant should be held guilty of the lesser crime of homicide.

The generic aggravating circumstance of taking advantage of one's public position under Article 14, No. 1 of the Revised Penal Code is present. Appellant, at the time of the commission of the crime, was a member of the former PC-INP, and therefore a public officer under the provisions of Article 203 of the Revised Penal Code. He flaunted his position. He admitted that the weapon used in killing the victim was his service armalite.[23] In several cases, we have held that taking advantage of one's public position is present when the gun used by appellant was the M-16 armalite issued to him.[24]

As recommended by the OSG, the alternative circumstance of intoxication should be appreciated as a mitigating circumstance in favor of appellant since it was duly proven that (a) at the time of the commission of the criminal act, he had taken such quantity of alcoholic drinks as to blur his reason and deprive him of a certain degree of

control and (b) that such intoxication is not habitual or subsequent to the plan to commit the felony.[25] In the absence of proof to the contrary, it will be presumed that intoxication is not habitual but accidental, and the fact that the accused was drunk at the time of the commission of the crime must then be considered as a mitigating circumstance.[26]

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. There being one mitigating circumstance of intoxication and one aggravating circumstance of taking advantage of one's public position, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, appellant's sentence should be within the range of prision mayor as minimum, and reclusion temporal medium as maximum.

The award of P50,000.00 as indemnity should be affirmed, pursuant to existing jurisprudence.[27] However, the award of P100,000.00 as moral damages, should be deleted for lack of factual basis.[28] The prosecution did not claim or present evidence, testimonial or otherwise, to show that the heirs of the deceased are entitled thereto. In the present stage of our case law involving the criminal taking of human life, evidence must be adduced by the offended parties to warrant an award for moral damages under the civil law.[29]

WHEREFORE, the judgment of the trial court is set aside and a new one entered finding appellant Amadeo I. Acaya guilty of the crime of homicide, and sentencing him to suffer the penalty of nine (9) years of prision mayor as minimum and fifteen (15) years of reclusion temporal medium as maximum, to pay the heirs of the victim the amount of P50,000.00 as death indemnity, and to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] The records merely indicated his middle initial, not his middle name.

[2] Rollo, pp. 16-17.

[3] TSN, April 18, 1990, pp. 3-12; TSN, June 19, 1992, pp. 2-14.

[4] Records, pp. 1-2.

[5] TSN, September 13, 1989, p. 2; Records, p. 36.

[6] TSN, June 19, 1992, pp. 18-28; Post-Mortem Examination, Records, p. 176; Certificate of Death, Records, p. 15.

[7] TSN, June 19, 1992, pp. 31-42; TSN, September 15, 1992, pp. 3-20.

[8] TSN, September 16, 1992, pp. 23-33.

[9] Records, pp. 272-283.

[10] Rollo, pp. 59, 64.

[11] People v. Naguita, G.R. No. 130091, August 30, 1999, p. 11.

[12] People v. Malimit, 264 SCRA 167, 175 (1996).

[13] People v. Badon, G.R. No. 126143, June 10, 1999, p. 11; People v. Compendio, Jr., 258 SCRA 254, 262 (1996).

[14] Rollo, p. 19.

[15] G.R. No. 129732, November 19, 1999, p. 7.

[16] People v. Rada, G.R. No. 128181, June 10, 1999, p. 15; People v. Agunias, 279 SCRA 52, 65 (1997).

[17] TSN, June 19, 1992, pp. 36-38, 41-42; TSN, September 15, 1992, pp. 3-11.

[18] TSN, September 15, 1992, pp. 2-19.

[19] Citing U.S. v. Burns, 41 Phil. 418 (1921).

[20] Rollo, p. 18.

[21] People v. Piamonte, G.R. No. 91999, February 25, 1999, p. 12.

[22] People v. Tavas, 303 SCRA 86, 96 (1999).

[23] Rollo, p. 63.

[24] People v. Gutierrez, 302 SCRA 643, 665 (1999); People v. Gapasin, 231 SCRA 728, 736 (1994).

[25] People v. Rabanillo, G.R. No. 130010, May 26, 1999, p. 10; People v. Boduso, 60 SCRA 60, 70-71 (1974); People v. Abalos, 57 SCRA 330, 338 (1974).

[26] People v. Dungka, 64 Phil. 421, 426 (1937).

[27] People v. Suplito, G.R. No. 104944, September 16, 1999, p. 12.

[28] People v. Noay, 296 SCRA 292, 308 (1998).

[29] People v. Delmendo, 296 SCRA 371, 381-382 (1998).

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