

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMY VALLES, ACCUSED-APPELLANT.

G.R. No. 110564. January 28, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

A crime may be the result of irritation or obfuscation. Habet et musca splenum — it means in a literal sense, even a fly has its spleen. Sadly, in the case before us, the victim was gunned down — dead.

Assailing the decision [1] of the trial court which found the accused guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 6834 and sentenced him to suffer the penalty of reclusion perpetua, accused-appellant Ramy Valles filed this instant appeal dated September 28, 1993 assigning the following errors [2] for our consideration:

- A. The court a quo erred in its finding that the accused is guilty of murder.
- B. The court a quo erred also when it failed to appreciate voluntary surrender.
- C. The court a quo further erred for failure to appreciate passion and obfuscation as mitigating circumstances.

The Information [3] dated November 26, 1990, which charged accused Ramy Valles with the crime of murder, reads as follows:

"That on October 20, 1990 at about 9:00 o'clock in the morning in Tambler, General Santos City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an armalite rifle (M-16) and with treachery, did then and there wilfully, unlawfully and feloniously shoot one Elmer Parcullo twice hitting the latter on his buttock and lower abdomen which caused his death.

CONTRARY TO LAW."

The evidence of the prosecution shows that in the morning of October 20, 1990, the victim, Elmer Porcullo, [4] who was a worker of Sta. Monica Canning Corporation (Sta. Monica, for brevity) at Tamales, General Santos City went there to collect his salary. He boarded a jeepney wherein two of his co-employees, Rizza Pelegrino [5] and Paulita Palencia were also passengers. [6] Upon reaching Sta. Monica, the three alighted from the passenger jeepney and proceeded towards the gate of Sta. Monica. Rizza and Paulita were allowed by the security guards to enter the compound of the company, but not Porcullo who was prohibited by the accused Ramy Valles, a security guard of the company, since the former was only wearing "sando" and pants [7] and had no identification card to present which allegedly was in violation of the company rules requiring employees to enter the company's premises in proper uniform. After collecting their salaries, Paulita and Rizza came out of Sta. Monica premises and saw Porcullo standing six (6) meters away from the gate of the company. They stopped by Porcullo who told them that he was prevented by the accused from entering Sta. Monica because he was not wearing his uniform and proceeded to board a passenger jeepney parked near the gate of Sta. Monica. Paulita was seated near the back

entrance of the jeepney when she saw Porcullo approached the gate of Sta. Monica and had a brief conversation with the accused. Porcullo then turned around and walked away from the accused, but the latter without warning shot Porcullo with "a long black firearm with a magazine". [8] He turned sideways to look at his wound but, again, he was shot by the accused. Paulita and Rizza quickly alighted from the jeepney and approached the body of Porcullo whose eyes were staring blankly at them. With the help of the conductor of the jeepney, they brought the body of the victim to St. Elizabeth Hospital where he was declared dead on arrival. According to Dr. Gervacio Posadas of the General Santos City Health Office who conducted the postmortem examination on the cadaver of Porcullo, the victim sustained two (2) gun shot wounds, one on the left buttock and the other was below the right armpit.[9]He said that the latter wound, which was six (6) inches below the armpit, was fatal.

The accused presented a different version. He testified that when he did not allow Porcullo to enter the Sta. Monica premises because he was only wearing a 'sando', the latter started to utter unsavory remarks at him. [10]After the accused was berated and then challenged to a fight, Porcullo suddenly tried to grab the former's service rifle. [11] Both of them wrestled for possession of the gun until it accidentally fired hitting the victim twice. The accused admitted that his finger was on the trigger of the gun when it went off. [12]When asked by his counsel to demonstrate how Porcullo grabbed his rifle, the accused demonstrated by holding the butt of the gun by his right hand with his left foot forward. [13] Two defense witnesses were presented by the accused to corroborate his testimony. Godofredo Male, an electrician of Sta. Monica who was then sitting on a hollow block near the gate, testified that he saw Porcullo got angry at the accused after he was prohibited from entering the premises of Sta. Monica. [14] He described how Porcullo tried to seize the gun "x x x with his two hands holding the muzzle of the gun x x x", [15] "x x x his right hand forward and the left hand at the rear of the gun". [16] The same thing was testified to by Tita Aquino, the other security guard of Sta. Monica who was manning the main gate during that time. According to her, there was a heated verbal confrontation between Porcullo and the accused when all of a sudden Porcullo tried to take away the service firearm of the accused, which unfortunately led to the unintentional shooting of Porcullo. [17]

The trial court, however, in its decision dated October 21, 1992, [18]was not at all persuaded, it debunked the gun-grabbing story of the accused by portraying it as "comical testimonies". The relevant portion of the decision reads as follows:

"xxx

The defense of the accused that Elmer Porcullo tried or wanted to wrench or grab the Armalite rifle from him xxx is an affirmative defense which accused (sic) has the burden of proof to substantiate (sic) by convincing evidence.xxx. The defense of the accused is akin to a plea of self-defense.

Godofredo Male said that Elmer Porcullo held the gun by the muzzle with his right hand forward while the left hand held the rear of the gun. Accused Ramy Valles said that Elmer Porcullo held the butt of the rifle with his right hand and had his left foot forward.

With the position described by Godofredo Male (holding with his right forward and the left hand at the rear of the gun) the right foot must be forward. It could not be the left foot that was forward; that would be awkward and unnatural.

Godofredo Male did not say that Elmer Porcullo held the butt of the rifle. He said that what Elmer Porcullo held was the muzzle of the rifle. Ramy Valles said that Elmer Porcullo held the butt of the rifle with his right hand.

xxx

Godofredo Male, Tita Aquino and accused Ramy Valles testified that after the first bark, Elmer Porcullo changed

position in such away that the muzzle of the rifle pointed to his right side (77 and 89).

('xxx when he (Porcullo) first pulled the gun, it was to his left and after the first shot, he now changed position, thus the barrel of the gun was now pointed towards his right.'(p. 77, testimony of Godofredo Male)

('that before the second outburst, 'The muzzle of the gun was already pointed to the right side of the body of the victim.' (Testimony of Ramy Valles, 135).

('After the first firing he changed position and pulled the gun towards his right side and there was a second firing and Elmer Porcullo slumped to the ground.' (89, testimony of Tita Aquino).

The court understands these comical testimonies of defense witnesses Godofredo Male and Tita Aquino on these very material point. These comical testimonies were given by the defense to conform with and to explain, the position of the gunshot wounds sustained by Elmer Porcullo. It is highly improbable that if the testimonies of both Godofredo Male and Tita Aquino that Elmer Porcullo and Ramy Valles were tugging the rifle between them were true, that Elmer Porcullo shuffled his feet to assume another position, because that would mean changing the position of the hands. And Elmer Porcullo would not endeavor to have the muzzle of the armalite rifle point to his body.

The position of Elmer Porcullo as described by Godofredo Male, which was: "Elmer Porcullo held the muzzle of the gun turning it to the left and at the same time pulling the gun away from Ramy Valles" (55), would not have the muzzle of the rifle point to the left side of his body, but to his stomach. If the gun went off as a result of the alleged tugging by Elmer Porcullo of the rifle, he would have been hit by his stomach, and not on the left buttock that caused a tangential wound. It would have been easier and safer for Elmer Porcullo, granting that this "Tug of war" between Elmer Porcullo and Ramy Valles were true, to pull the rifle and have the muzzle point to the right of his stomach, away from it, than to point it the left of his stomach, away from it.

xxx

If Elmer Porcullo were shot while he and Ramy Valles were having a 'tug of war' for the possession of the Armalite rifle, it is a big wonder why there were no powder burns around the gunshot wound six inches below the right armpit. As Elmer Porcullo was wearing a loose 'sando' that exposed his nipples, the area six inches below the armpit must not have been covered and was bare. The absence of powder burns is a strong indicia that the muzzle of the armalite was beyond one (1) meter away from Elmer Porcullo's body. The absence of powder burns belies the defense of the accused. x x x

Between the testimony of prosecution witness Paulita Palencia and those of defense witness Godofredo Male and Tita Aquino, and Ramy Valles, the accused in this case, the Court gives credence to the testimony of the former — Paulita Palencia, and totally rejects the defense tale.

xxx

The evidence of the prosecution has it that Elmer Porcullo and Ramy Valles were facing each other. When Elmer Porcullo turned his back 'maybe because he was not allowed entry by the accused' (20), to borrow the words of prosecution witness Paulita Palencia, accused Ramy Valles shot him, hitting him on the left buttock. As Elmer Porcullo continued walking away and looking at his behind to see where he had been hit, the accused shot him again, hitting him six (6) inches below the right armpit."

xxx

WHEREFORE, finding accused RAMY VALLES guilty beyond reasonable doubt of the crime of murder, and there being no aggravating nor mitigating circumstances to offset each other, the Court hereby sentences RAMY

VALLES to reclusion perpetua to be served by him at the National Penitentiary at Muntinlupa, Rizal." [19]

In his Appellant's Brief dated September 28, 1993, [20]the accused- appellant made a turnabout by abandoning the allegation of gun-grabbing incident. Nonetheless, he asserts that the crime committed is only homicide and that he is entitled to the mitigating circumstances of passion or obfuscation and voluntary surrender. He claims that he never planned to murder the victim nor shoot him in a treacherous manner, that it was due to Porcullo's berations that he lost his temper, so the latter shot him twice causing his instant death. In addition, the fact that he proceeded to the PC barracks after the shooting incident bolsters his claim that he surrendered to the proper authorities at his own volition and would certainly merit the mitigating circumstance of voluntary surrender.

The prosecution, on the other hand, alleges that treachery attended the killing of Porcullo considering the fact that before the accused fired his armalite rifle at Porcullo, he waited for the latter to walk at a certain distance away from him and with his back turned from the accused. The suddenness of the attack which completely deprived the victim of any chance to defend himself and the conscious adoption of this particular mode more than satisfied the requisites of treachery that qualified the crime to murder. [21]

The appeal is meritorious.

At the outset, we reiterate the rule that absent any showing of a fact or any circumstance which the trial court failed to appreciate and which would have changed the result if it were considered, the factual findings as laid down by the trial court remain binding upon us. [22] In the instant case, the trial court's factual finding that the death of the victim was not the result of the gun-grabbing incident between the accused-appellant and the victim but of the accused-appellant's intentional shooting is conclusive and binding upon this Court, as this finding is supported by the records and is based on substantial evidence. However, contrary to the trial court's conclusion, we are convinced that treachery was not employed by the accused-appellant in shooting Porcullo.

Under the Revised Penal Code, there is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [23] Thus, for treachery to be present, two conditions must concur, namely: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution was deliberately or consciously adopted. [24] These two conditions are clearly wanting in the case at bar. Although Porcullo was unarmed at the time of the shooting, such circumstance alone did not satisfy the legal requirements of treachery. In *People vs. Estrellanes*, we declared in no uncertain terms that "the mere fact that the victim had no weapon with which he could have defended himself is not sufficient to prove the existence of the first element of treachery, for settled is the rule that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself." [25] Furthermore, there must be some evidence, none of which, however, obtains in the instant case, showing that this mode of assault is deliberately or consciously adopted to insure the execution of the crime without risk to the offender. Accordingly, if the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocation on the part of the victim, then no treachery attended the commission of the crime. [26] The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked. [27] Prior to the shooting, Porcullo evidently provoked the accused-appellant when he hurled invectives at him and challenged him to a fight. This vexatious conduct of the victim was sufficient to ignite the wrath of the accused- appellant who did not let the repeated taunts and verbal mockeries of the victim unpassed by precipitately shooting him twice with his service firearm. Accused-appellant Valles reveals, in his direct examination, these decisive moments:

Q

What did he do when you advised him not to enter because of that improper attire ?

A

He insisted on getting inside.

Q

And because he seemed to be mad at you, what did he do?

A

He kept on insisting to go inside and I did not allow him because he was not in proper uniform and I advised him to go home and change his clothes and wear his uniform such as a white teeshirt before I will allow him to get inside.

Q

Did he heed your advice ?

A

No, sir.

Q

Instead what did he do ?

A

He got mad.

Q

And after getting mad, do you remember if he did anything?

A

Yes sir, he berated me and challenged me to go out of the compound and have a fist fight with him.

Q

How did he challenged you, in what manner did he challenge you?

A

He pointed his finger at me and said: 'Putang Ina mo, akala mo sino ka, hindi mo ba alam na ex-army ako?'.
[28]

Significantly, he testified during his cross examination that he was approached not only once but four (4) times by the victim who was insisting to get inside the compound of the company, and it was on the third and fourth times that the victim got mad and started insulting him. He declared:

Q

Let us get this clearly. You said for the first time Porcullo approached you and asked you to allow him to enter the compound, you did not allow him to enter because he was not in proper attire or uniform, correct?

A

Yes, sir.

Q

Then he went away and later returned to you, after twenty minutes?

A

Yes, sir.

Q

Again he asked you and pleaded to you that he has no more fare and that you should allow him to enter is that what happened ?

A

He did not tell me that he has no more fare but he just insisted on getting inside.

Q

That is an interval of 20 minutes, the second time he returned to you?

A

Yes, sir

Q

He again went away?

A

Yes sir, he went away and then returned.

Q

And on the third time, did you talk with each other?

A

That was the time he already got angry with me sir and he challenged me to a fist fight.

Q

Did he go away for the fourth time?

A

The fourth time he returned to me that was already the time he pointed his finger at me and uttered words."
[29]

It is important to point out that the accused-appellant, in prohibiting Porcullo from entering the Sta. Monica compound, merely performed his duty and followed, as well, the order of the Sta. Monica management which issued a memorandum dated August 22, 1987 [30] ordering the workers to wear their complete uniform and those found violating this regulation would not be allowed to work. There is, therefore, no justifiable reason for Porcullo, who was unquestionably wearing improper uniform at that time, to get back at the accused-appellant by repeatedly berating him and challenging him to a duel. In so doing, Porcullo apparently incited the fury of the accused-appellant, and, at this instance, Porcullo should naturally expect and anticipate the possible consequences

of his rebellious acts — like the consequent retaliation by the accused-appellant against his life. He courted obvious danger, and when it came, it can not be defined as sudden, unexpected and unforeseen. [31] Alevosia presumes an attack that is deliberate and unexpected. [32]

With the facts established above, we likewise agree with the accused- appellant that he is entitled to the mitigating circumstance of obfuscation. There is passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason. [33]The attack by accused-appellant Valles upon the person of the victim was evidently dictated by the sudden impulse of his natural fury that was fomented by Porcullo's acts of provocation. His anger and indignation were so great that he lost his self-control when he assaulted Porcullo with his service firearm.

We can not, however, subscribe to the position of the accused- appellant that the mitigating circumstance of voluntary surrender must be appreciated in his favor. The only evidence which the accused-appellant presented is his uncorroborated testimony, during his cross examination, that he purportedly surrendered to the authorities after shooting the victim, the relevant portion of which reads as follows:

Q.

Aside from Godofredo Male and these two others, were there others who also assisted them in loading the body of Elmer Porcullo to the Ford Fiera?

A.

I do not know anymore because I already left and went to the office.

Q.

Did you try to verify what happened to the victim after the shooting?

A.

I was already at the PC barracks when I learned that Elmer Porcullo died.

Q.

On the same day, October 20?

A.

Yes, sir." [34]

According to him, the circumstance of voluntary surrender can be inferred from the foregoing testimony. By reporting the incident to his immediate superior in the company and proceeding to the PC barracks after the shooting and staying there until the case was formally filed with the court were indications of remorse or of one analogous to voluntary surrender. [35]

The evidence of the accused-appellant, which consists merely of self- serving allegations, is weak. It is but a product of flimsy inferences which carry no weight in proving the allegation of voluntary surrender. The foregoing testimony simply states that the accused-appellant was inside the PC barracks when he was informed of Porcullo's death. Apparently, there is no showing that accused-appellant had not been actually arrested and that when accused-appellant went to the PC barracks, he surrendered himself to a person in authority or his agent, [36]nor is there a finding that he had evinced any desire to own the complicity in the killing of Porcullo. [37] An accused who did not go to the PC headquarters after the shooting to surrender but merely to report the incident

can not be deemed to have voluntarily surrendered within the contemplation of the law. [38] The absence, therefore, of sufficient and convincing proof showing the existence of these indispensable circumstances required by jurisprudential moorings proves futile to the accused-appellant's claim for mitigation by voluntary surrender. More can be said on this account but simply put, the evidence on record would not warrant the same.

As we have stated earlier, there was absence of alevosia to qualify the act of accused-appellant to murder. In *People vs. Tumaob*, [39] we laid down the rule that —

"xxx the qualifying circumstances of treachery cannot be logically appreciated against the accused because the latter did not make any preparation to kill the deceased so as to insure the commission of the crime making it at the same time impossible or hard for the person attacked to defend himself or retaliate. Moreover, that, as in this case, the attack was sudden did not constitute alevosia because of lack of evidence showing that the aggressor consciously adopted a mode of attack intended to facilitate the commission of the crime without risk unto himself."

IN VIEW WHEREOF, the decision appealed from dated September 28, 1993 is AFFIRMED with the MODIFICATION that accused-appellant is found guilty of the lesser crime of homicide with the mitigating circumstance of passion or obfuscation and sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN YEARS and EIGHT MONTHS of reclusion temporal as maximum.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Penned by Judge Jose L. Orlino of the Regional Trial Court of General Santos City, Branch 23 of the 11th Judicial Region.

[2] Rollo p. 32. Accused-Appellant Brief p. 2.

[3] Original Records, p. 1.

[4] Porcullo is referred to as Parcullo in some parts of the record.

[5] Rizza Pelegrino is referred to as Riza Perigrino or Peligrino in some parts of the record.

[6] Testimony of Palencia dated January 6, 1992, pp. 15-16.

[7] Ibid, p. 17.

[8] Ibid., p. 19.

[9] Original Record, p. 4.

[10] TSN dated February 20, 1992, pp. 116-117.

[11] Ibid.

[12] Ibid., p. 119.

[13] Ibid., p. 118.

[14] TSN dated February 17, 1992, p. 53.

[15] Ibid., p. 55.

- [16] Ibid., p. 71.
- [17] TSN dated February 18, 1992, pp. 85-87.
- [18] Original Records pp. 76-90.
- [19] Decision pp. 85-90.
- [20] Rollo pp. 31-45.
- [21] Rollo pp. 75-76, Brief For The Appellee pp. 6-7.
- [22] People vs. Lapuz, G.R. No. 113515, November 23, 1995.
- [23] Article 14, par. 16.
- [24] People vs. Silvestre, G.R. No. 109142, May 29, 1995.
- [25] G.R. No. 111003, December 15, 1994.
- [26] People vs. Real, G.R. No. 93436, March 24, 1995, citing People vs. Aguiluz.
- [27] Sison vs. People, G.R. No. 108280-83, November 16, 1995; People vs. Abapo, G.R. No. 93623-33, December 28, 1994.
- [28] TSN dated February 20, 1992, pp. 116-117.
- [29] Ibid., pp. 129-130.
- [30] Original Record p. 55.
- [31] People vs. Lopez, G.R. No. 112448, October 30, 1995.
- [32] Ibid.
- [33] The Revised Penal Code by Ramon C. Aquino, Volume I, 1987 Edition, p. 265.
- [34] Rollo p. 44 Accused-Appellant Brief p. 14: TSN dated February 20, 1992, pp. 135-137.
- [35] Rollo pp. 44-45 Accused-Appellant Brief pp. 14-15.
- [36] See Estacio vs. Sandiganbayan, G.R. No. 75362, March 6, 1990.
- [37] See People vs. Rogales 116 Phil. 1145.
- [38] Ibid.
- [39] 83 Phil., 738.

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