

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS ESPINOSA, JR. AND RODNEY ESPINOSA, ACCUSED, JESUS ESPINOSA, JR. ACCUSED-APPELLANT.

G.R. No. 113795. March 28, 1995

Ponente: MELO, J.

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MELO, J.:

Accused were charged with murder in an Information reading as follows:

That on or about the 13th day of February 1993, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused Jesus Espinosa alias Jingjing Espinosa, armed with a handgun of unknown caliber, conspiring and confederating with Rodney Espinosa, working together and helping one another, with evident premeditation, by means of treachery and with a decided purpose to kill, did then and there wilfully, unlawfully and criminally shot, hit and wound Augusto Elon with the said handgun, with which the herein accused was provided at the time, thereby causing upon said Augusto Elon bullet wounds on his head, which cause his death few moments thereafter.

(p. 8, Rollo.)

After trial, the court a quo rendered a decision dated November 19, 1993 disposing:

WHEREFORE, premises considered, the accused Jesus Espinosa, Jr., alias Jing-Jing Espinosa, is hereby found guilty beyond reasonable doubt as principal, in the crime of murder, defined and penalized under Art. 248 of the Revised Penal Code and there being no mitigating or aggravating circumstance, is hereby sentenced to suffer the penalty of reclusion perpetua. The accused, Rodney Espinosa, alias Rodney Secuilan, is acquitted on the ground that the prosecution failed to prove his guilt beyond reasonable doubt. The accused Jesus Espinosa, Jr. is further ordered to pay as civil liability to the heirs of the deceased, the amount of P4,450.00, as actual damages; P50,000.00 for his wrongful death and P20,000.00 as moral damages; and the costs of this suit. Said accused Jesus Espinosa, Jr., who is detained, is accredited with the number of days he spent under detention, if he is qualified, otherwise he shall be credited with only four-fifth (4/5) of his preventive imprisonment. The other accused, Rodney Espinosa, alias Rodney Secuilan, who is also detained, is hereby ordered released immediately.

(pp. 87-88, Rollo.)

From said decision accused Jesus Espinosa, Jr. appealed, insisting on his alibi.

The facts of the case, as summarized by the trial court and as borne out by the evidence, are as follows:

At about 11:40 in the evening of February 13, 1993, while the deceased Augusto Elon, a deaf mute, was urinating near the gate of the fence of the house of his sister, Cynthia Villanueva, at Zamora Extension Street, Iloilo City, the accused Jesus Espinosa, Jr. alias Jing-Jing Espinosa, shot said Augusto Elon at the back of his head three times, which caused his death. Rodney Espinosa, alias Rodney Secuilan, was standing about four feet away from Jesus Espinosa, Jr., when the latter shot Augusto Elon. The shooting of Augusto Elon was witnessed by his father Juan

Elon because at that time, he was sleeping in the house of his daughter Cynthia, which house is situated along the road, or along Zamora Extension Street. He was requested by his daughter to sleep at her house, which is only fifteen (15) meters away from his own house, as Cynthia's husband was at Lemery, Iloilo, at that time, and she and her children had no companion in their house. As earlier stated, the house of Cynthia Elon Villanueva is located along or about one (1) foot from Zamora Extension Street. The fence of her house which is made of hollow blocks is at the same time the wall of the front of her house. The place where his son was shot was well lighted and there was an electric light at the post near the place of the incident. When Jesus Espinosa, Jr. shot Augusto Elon he was about three feet away, more or less, from the deceased. The deceased was facing the wall when he was shot and his back was turned towards the accused, Jesus Espinosa, Jr. Juan Elon cried aloud when he saw his son being shot and ran downstairs, towards him, but he stumbled at the mosquito net of his grandchildren. His wife who was sleeping at their house, which is very near the house of his daughter, arrived first at the scene of the incident. When he reached his son, Juan Elon embraced him. He saw that the bullets were "bulging" on his forehead and blood was oozing from his neck. He was already dead. He recognized the accused because he worked as a "stevedore" at the pier, and had also worked with the grandfather of the accused and had known the accused since they were small. At the time of his death, Augusto Elon was only 21 years old. Although a deaf mute, his son was employed at "Basic Fruit Corporation" situated at Pavia, Iloilo. His job was "peeling banana", to be made into "banana chips" but he does not know how much his son was earning. His son usually went home at about 10 to 11 o'clock in the evening, because before going home he used to pass at the back of the church at Jaro, Iloilo, to visit his friends, who were also deaf mutes. After his son died, the cadaver was embalmed and an autopsy was conducted. He paid funeraria Porras the amount of Three Thousand Six Hundred (P3,600.00) Pesos, for funeral services. He also hired 6 jeepneys during the funeral at Fifty (P50.00) Pesos. He bought "Zest-O" Juice during the funeral, for the merienda of the deceased's friends, he spent the amount of One Thousand Four Hundred (P1,400.00) Pesos. He also bought bread and sandwich spread and spent One Thousand (P1,000.00) Pesos. For the "pantheon" of his son he spent Six Hundred (P600.00) Pesos. For church services, Two Hundred (P200.00) Pesos, or a total amount of Four Thousand Four Hundred Fifty (P4,450.00) Pesos. The testimony of Juan Elon, the father of the deceased was corroborated by another eyewitness Romualdo Robles. He testified that while he was on his way home to Zamora Extension Street, at around 11:40 in the evening of February 13, 1993, coming from Rotary park and while he was across the street in front of the house of Juan Elon, he saw Jesus Espinosa, Jr. shoot Augusto Elon or "Apa Elon", in front of their house at Zamora Extension, Iloilo City. He was about fifteen to twenty meters away from the place of the incident and the place was well lighted. At the time of the shooting, Augusto Elon was urinating and the deceased was about three to four feet away from the assailant. He saw Jesus Espinosa, Jr. shoot "Apa" Elon three times and the deceased fell on his face on the fence (*nagdamhag sa kudal*) and he fell on the ground on his back.

(pp. 70-73, Rollo)

Accused-appellant maintains that the prosecution failed in its task to identify him positively as the perpetrator of the crime. The evidence does not support accused-appellant's contention. Two eyewitnesses to the shooting positively identified accused-appellant as the person who shot the victim. Prosecution witness Romualdo Robles positively and unequivocally identified accused-appellant as the perpetrator of the crime. Robles testified thusly:

Atty. CASTRO:

While you were on your way home that evening of February 13, 1993, at around 11:40 in the evening, can you recall whether there was any untoward incident that happened?

WITNESS:

Yes, I witnessed the shooting incident done by Jingjing Espinosa to Apa Elon.

ATTY. CASTRO:

Who is this Apa Elon?

WITNESS:

The son of Tyo Juan Elon?

ATTY. CASTRO:

What is his name if you know?

WITNESS:

Agosto Elon.

ATTY. CASTRO:

You said you witnessed the shooting of Apa Elon, in what particular place was Apa Elon shot?

WITNESS:

In front of their house?

ATTY. CASTRO:

In what street?

WITNESS:

Zamora Extension.

ATTY. CASTRO:

Iloilo City?

WITNESS:

Yes, sir.

ATTY. CASTRO:

You said you saw the shooting of Apa Elon, how far were you from the place where the shooting took place?

WITNESS:

My distance from the victim is about from 15 to 20 meters.

ATTY. CASTRO:

From where you were situated, where is the shooting incident, can you tell whether the place of the incident is lighted or not?

WITNESS:

In the house of Tyo Juan there was a light and the place of the incident is so well lighted.

ATTY. CASTRO:

Who is this Tyo Juan you are referring to?

WITNESS:

The father of Apa Elon.

ATTY. CASTRO:

You said you saw the actual shooting of Apa Elon, what was victim doing when he was shot?

WITNESS:

He was urinating and his back turned down the assailant.

ATTY. CASTRO:

How far was the assailant from the victim when the victim was shot?

WITNESS:

Three to four feet from the back

ATTY. CASTRO:

You said Apa Elon was shot by Jing-Jing Espinosa, do you know the complete name of Jing-Jing Espinosa?

WITNESS:

Jesus Espinosa.

ATTY. CASTRO:

If this person whom you and who shot Apa Elon is inside the courtroom, can you point to him?

WITNESS:

Yes, sir.

ATTY. CASTRO:

Please point to him?

WITNESS:

There (witness is pointing to one in the audience whom when asked answered by the name of Jesus Espinosa.

(pp. 7-13, tsn, July 23, 1993)

The testimony of Romualdo Robles was fully corroborated by Juan Elon, the father of the victim, who testified as follows:

PROSECUTOR:

At about that time 11:40 you said you witnessed the shooting of your son, where was your son situated insofar as you are concerned in relation to you?

WITNESS:

Beside the gate because he was urinating.

PROSECUTOR:

While your son was urinating were you also witnessing the same?

WITNESS:

Yes, sir.

PROSECUTOR:

What happened then when your son was urinating?

WITNESS:

Jesus alias Jingjing and Rodney Espinosa passed by and without any provocation they shot my son three times.

PROSECUTOR:

Why did you say that without any provocation they shot your son three times?

WITNESS:

I do not know, because my son was urinating and my son is a deafmute.

PROSECUTOR:

Did you see where your son was shot?

WITNESS:

At the 'tangkugo'.

PROSECUTOR:

How many times he was shot?

WITNESS:

Three times.

PROSECUTOR:

Who shot him?

WITNESS:

Jesus Espinosa, Jr. alias Jingjing.

PROSECUTOR:

Did you see him holding a gun?

WITNESS:

Yes, sir.

PROSECUTOR:

Did you see his face clearly when he shot your son?

WITNESS:

Yes, sir.

PROSECUTOR:

Why do you say you saw his face clearly?

WITNESS:

Because the street was well-lighted and there is a post-lamp and the light at the houses were lighting.

(pp. 12-15, *ibid*).

Accused-appellant questions the veracity of the testimony of Juan Elon, maintaining that Juan Elon was asleep at the time that the victim was shot. Again the evidence does not substantiate accused-appellant's contention. Juan Elon unequivocally testified that he was fully awake when the shooting took place.

ATTY. MACAHILIG:

What time did you wake up after having gone to sleep?

WITNESS:

I am already old and my sleep is not so heavy and it is so light that I can hear the noise and I hear the trisykad that stopped and I saw my son alighted from that trisykad.

(p. 29, *tsn.*, July 7, 1993)

In the absence of any ill motive on the part of Juan Elon to point to accused-appellant as the perpetrator of the crime charged, Juan Elon's testimony must be given full faith and credit (*People vs. Tolentino*, 218 SCRA 337 [1993]). A thorough search of the record fails to uncover any such ill motive. Neither does his relationship to the victim impair his credibility (*People vs. Dominguez*, 217 SCRA 170 [1993]).

Further, accused-appellant impugns the testimony of prosecution witness Romualdo Robles. Accused-appellant asserts that the testimony of Robles to the effect that Juan Elon and his wife went out of the house together is inconsistent with the testimony of Juan Elon that his wife went out of their house first then followed by him. The question of who got out of their respective houses first is obviously a minor, trivial, and inconsequential matter that cannot adversely affect the testimony of Robles that he saw accused-appellant shoot the victim.

Accused-appellant also assails Robles for his failure to immediately report what he saw to the policeman who arrived at the scene of the crime. Such failure does not subvert the credibility of Robles, for as explained by him he immediately went home after the shooting because he was afraid that he might get involved (p. 7, *tsn.*, July 23, 1993).

The reticence of Cabatas to immediately reveal the said statement to the police officers was satisfactorily explained; he was then afraid. The natural reluctance of witnesses to volunteer information to the police authorities in criminal cases is a matter of judicial notice. He might have deemed it the better part of valor not to give the name of the accused who was still at large and who probably recognized him. Such reluctance should not affect his testimony. The decisive factor is that he in fact identified the accused.

(*People vs. Viente*, 225 SCRA 361, 370.)

In an attempt to destroy the credibility of Robles, accused-appellant presented a certification of Kilayko Express Services, Inc. to the effect that Robles had never been an employee thereat, this to rebut the statement of Robles that he was an errand boy of Kilayko Express, Inc. In this regard, we fully agree with the following observation of the trial court:

The defense would like to assail the credibility of Romualdo Robles, the second witness of the prosecution by presenting a certification issued by the president or general manager of Kilayko Express, Inc., Victor Kilayko, that Mr. Romualdo Robles has not been an employee of Kilayko Express, Inc. in whatever capacity since 1990 up to

1993. But Romualdo Robles never asserted that he was an employee of Kilayko Express, Inc. He merely testified that he was a mere "errand boy" or "messenger" but not a regular employee. He received no regular salary and he accepted whatever amount that might be given to him as an errand boy. As a matter of fact, in his personal circumstances, he stated that he was jobless.

(pp. 25-26, Rollo.)

We reject the defense of alibi put up by accused-appellant not only because alibi cannot prevail over the positive identification by the prosecution witnesses (*People vs. Dominguez*, 217 SCRA 170 [1993]), but also because accused-appellant has failed to establish that it was physically impossible for him to have been present at the place where the crime was committed at the time it happened. (*People vs. Flores*, 217 SCRA 613 [1993]). In the case at bench, accused-appellant professes that he was in a fishpond situated at Brgy. Taguanguin, Ajuy, Iloilo at the time of the commission of the crime. However, said place is only 80 kilometers away from Iloilo City, and can be negotiated by bus in about 1-1/2 to 2 hours. Therefore, the element of physical impossibility of presence of accused-appellant at the scene and the time of the crime does not obtain.

We, however, agree with accused-appellant that the mitigating circumstance of voluntary surrender should be taken into consideration in fixing the penalty. The trial court itself stated that the record shows the fact of voluntary surrender but refrained from taking it into consideration because, according to the trial court, the report or the warrant of arrest was not offered in evidence. There was no need for said report to be submitted in evidence because the court can take cognizance of it, the same being part of the record.

It is a settled rule that a tribunal may at any time take judicial notice of the records of a case pending before it.

(*Universal Textile Mills, Inc. vs. Court of Industrial Relations*; 36 SCRA 619, 623 [1970])

We nonetheless concur with the following findings of the trial court that the killing of the victim was characterized by treachery:

In this case, it was clearly shown beyond reasonable doubt that the back of the deceased was turned to the accused, when he was shot three times. He was urinating when shot and was defenseless. He was unaware what happened to him. He could not have put up any defense at all. In short, the accused in executing the crime, employed means, methods or forms which tend directly and specially to ensure its execution, without risks to himself arising from the defense which the offended party might make. There was no way the deceased could defend himself under the circumstances. Indeed, there was treachery.

(p. 84, Rollo.)

In view of the presence of the qualifying circumstance of treachery, the crime committed by accused-appellant is murder under Article 248 of the Revised Penal Code. There being a mitigating circumstance, the penalty for murder prescribed by said Article 248, which is reclusion temporal in its maximum period to death, should be imposed in its minimum period, or 17 years, 4 months, and 1 day, to 20 years. Applying the Indeterminate Sentence Law, the proper penalty is that next lower in degree, which is prision mayor in its maximum period to reclusion temporal in its medium period, or 10 years and 1 day of prision mayor, to 17 years and 4 months of reclusion temporal. (*People vs. Roel Ponayo y Villanueva*, G.R. No. 111523, August 10, 1994).

WHEREFORE, the decision appealed from is **HEREBY AFFIRMED**, with the modification that accused-appellant **IS HEREBY SENTENCED** to an indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

In all other respects, the decision appealed from is hereby affirmed.

No special pronouncement is made as to costs.

SO ORDERED.

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

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