

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN TANOY, ACCUSED-APPELLANT.

G.R. No. 115692. May 12, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Edwin Tanoy was charged with murder for the death of Ricardo L. Espinosa before the Regional Trial Court of Iloilo City, Branch 36, in Criminal Case No. 37116. The Information reads-

"That on or about December 31, 1987 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, armed with an armalite rifle, with deliberate intent and with decided purpose to kill, with treachery, did then and there, willfully, unlawfully and criminally shoot, hit and wound Ricardo L. Espinosa with the said rifle which the accused provided himself at the time, thereby causing upon said Ricardo L. Espinosa bullet wounds on vital parts of his body which caused his death moments thereafter."

Accused-appellant pleaded "not guilty" on arraignment. Trial on the merits ensued.

The facts as found by the trial court are as follows: On the night of December 30, 1987, in the course of an altercation, accused-appellant pistol-whipped Eduardo Alo on the head. Alo sought refuge at the house of retired Col. Ricardo L. Espinosa who at the time was the barangay captain of Infante, Molo, Iloilo City. That evening, Alo was brought to the hospital by Myrna Espinosa, daughter of Ricardo.

At around 10:00 o'clock the following morning, Ricardo Espinosa, Joel Kilayko and Bgy. Tanod Ruben Segutier went to the police station at Gen. Luna St., Iloilo City to report the incident between accused-appellant and Alo. When Espinosa was about to hand over the brown envelope containing the complaint against accused-appellant to the desk sergeant, accused-appellant P/Sgt. Edwin Tanoy, who was also inside the office of the desk sergeant, brusquely asked Espinosa: "Why are you running after me?" to which Espinosa replied: "We will just settle these things before the police."

Accused-appellant then grabbed the armalite rifle of the desk sergeant lying on the table and pointed the same at Espinosa, saying, "Later, I will kill you." Alarmed, Espinosa hid behind the concrete wall enclosing the office of the desk sergeant. A short while later, he emerged from his hiding place with his left arm extended with palm facing forward and his right arm behind his left arm with palm also facing forward as if to cover his chest. While in that defenseless position, accused-appellant shot him on the chest causing him to fall to the ground. Kilayko rushed towards Espinosa but accused-appellant aimed a pistol at him saying, "You also!" This prompted Kilayko to run inside the police station and ask for help.

Accused-appellant, however, denied having intentionally killed Espinosa. On the contrary, he averred that Espinosa's death was purely accidental. According to him, Espinosa arrived at the police station at around 10:00 o'clock in the morning of December 31, 1987 and berated him. He asked Espinosa why he was running after him, whereupon Espinosa immediately grabbed the armalite rifle that was lying on the table of the desk sergeant. They grappled for possession of the rifle and in the process, the rifle fired and Espinosa was hit on the chest. When he

saw Kilayko rushing towards Espinosa, he aimed his service pistol at him and Kilayko immediately retreated to where he came from.

The trial court did not give credence to the version of the defense. It ratiocinated that the killing of Espinosa could not have been accidental considering the nature of the wounds sustained by the victim. Relying on the medical findings of Dr. Jose Rafio who autopsied the body of the deceased, the trial court concluded that the victim could not have been shot while grappling for possession of the armalite. The wounds sustained by Espinosa on his hands indicated that he was raising his hands as if to cover his body when he was shot. Indeed, had accused-appellant grabbed and held the muzzle or barrel of the armalite rifle, his hands could not have been hit. Besides, it would have been highly improbable for the victim to grab the muzzle of the gun instead of its butt considering his knowledge and experience with firearms considering that he was a retired colonel of the defunct Philippine Constabulary.

The trial court likewise found the location of the brown envelope which Espinosa brought with him when he came to the police station as another telling point against the testimony of accused-appellant. The trial court held that if indeed accused-appellant and the victim were grappling for possession of the armalite rifle, the envelope would not have remained tucked under his arm. The trial court held thus -

"Evidence unrefuted shows that when the victim was fired upon, the said envelope was still tucked under his arm and as such was smeared with the victim's blood. It is very unlikely for the victim not to have lost hold of the brown envelope considering that he grappled for possession of the said armalite rifle. Expectedly, the victim could have resorted to forceful, sudden and jerky movements to gain possession of the rifle and in the process extended his arms over the cement division causing the brown envelope to fall. This not having been so when it was expected under the circumstances, belies the fact that 'grappling' indeed preceded the explosion." [1]

The trial court likewise ruled that treachery attended the commission of the crime. It found that -

"The prosecution has proven that all three wounds, on both hands and on the chest, of the victim were caused by a single bullet. This fact establishes a clear picture of the victim raising his hands, placing the same one after the other, before or in front of and at the level of his chest, most probably, to ward off the shot. In the case of *People v. Castro*, (G.R. No. L-20555 and L-21449, June 30, 1967), the Supreme Court ruled:

'Where the victim was shot when his hands were raised, to show that he would not fight, or because of fright or to try to ward off the shots that were to come, he was clearly in a defenseless position. This circumstance constitutes treachery.

"The victim was unarmed and defenseless. All that he had with him was the brown envelope which contained the supposed complaints to be filed against the accused in relation to the indiscriminate firing and pistol whipping incidents allegedly committed by the latter the day prior to the fatal incident. The fact, moreover, that powder burns were found on the hands of the victim confirmed that the victim was shot at close range thus making it more difficult if not impossible for the victim to avoid that shot or to afford himself some kind of protection. It may be said that the victim was utterly defenseless leaving himself with no other choice but to use his hands to ward off the bullet in desperation. In view of the aforecited ruling in relation to the foregoing fact, this Court believes that the qualifying circumstance of treachery was attendant and that the same has been duly proven as a fact." [2]

Having found that treachery attended the killing, the trial court sentenced accused-appellant to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim P50,000.00 and P43,060.00 for burial and funeral expenses. [3]

Accused-appellant is now before this Court with the following submissions:

1. THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED INTENTIONALLY FIRED AT THE VICTIM AND THEREFORE NOT ENTITLED TO THE EXEMPTING CIRCUMSTANCE UNDER PAR. 4, ART. 12 OF THE REVISED PENAL CODE.

2. THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER QUALIFIED BY TREACHERY.[4]

Accused-appellant argues that the trial court delved into the realm of speculation when it concluded that accused-appellant intentionally fired at the victim. He insists that the deceased sustained bullet wounds on both his hands "when the hands of the victim released the barrel of the armalite rifle when it fired by reason of the pulling towards each other by the accused-appellant and the victim of the said firearm." [5]

Appellant's argument has no merit. This Court agrees with the trial court's finding that accused-appellant and the victim did not grapple for possession of the armalite rifle. First: The location and nature of the wounds sustained by the victim support the theory of the prosecution that accused-appellant aimed the rifle at the deceased while the latter was in a standing position with his left arm slightly extended and his right arm behind his left arm and both palms raised as if to cover his chest. The bullet which pierced the chest wall of the deceased was the same bullet which wounded the hands of the deceased. Second: The deceased and accused-appellant could not have been in the act of grappling for possession when the rifle was fired. Before he was hit, the deceased first hid behind the cemented wall enclosing the office of the desk sergeant. While he was in hiding and after he emerged from his hiding place, the brown envelope which he brought to the police station was still tucked under his arm. Even after he fell to the ground when he was hit, the envelope remained there although smeared with blood. Third: It would be highly inconceivable for a retired PC colonel to hold the barrel of the gun pointing towards him while grappling for its possession.

Further, accused-appellant assails the trial court when it gave credence to the testimonies of prosecution witnesses Joel Kilayko and PO3 Felicito Sandoval.

It is settled jurisprudence that the assessment of the credibility of witnesses lies within the province and expertise of the trial courts. Absent any showing of abuse of discretion or that trial courts overlooked material and relevant facts which could affect the outcome of the case, their findings are accorded great weight and respect.

In the case at bar, this Court finds no abuse of discretion on the part of the trial judge. Neither did he overlook material and relevant facts. In fact, his findings are supported by uncontroverted physical evidence as well as the autopsy report. Therefore, the factual findings of the trial court shall remain undisturbed.

Not even the so-called inconsistencies alleged by accused-appellant could discredit the trial court's factual findings. In fact, closer examination reveals that these are not inconsistencies at all. The same refer to irrelevant and trivial matters and would not in any way change the conclusion that accused-appellant intentionally killed his victim. Specifically, the so-called inconsistencies mentioned by accused-appellant referred merely to: (a) the distance between prosecution witness Kilayko and the victim; (b) whether Capt. Artuz disarmed accused-appellant after he shot his victim; (c) the number of persons inside the office of the desk sergeant when the fatal shooting occurred; (d) the number of gunshots fired; and (e) the location of the armalite rifle before it was grabbed by accused-appellant.

Accused-appellant maintains that if indeed he was intent on killing the victim, he could have used the service pistol tucked in his waist instead of the armalite rifle. Appellant's submission is equally without merit. Evidence shows that the deceased died in the hands of accused-appellant using the armalite rifle.

Finally, this Court agrees with the findings of the trial court that treachery attended the commission of the crime.

The deceased did not expect any attack coming from the accused-appellant when he went to the police station that fatal morning of December 31, 1987. All he wanted was to file a complaint against accused-appellant, a copy of which was placed inside the envelope tucked under his arm. Treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[6] The victim was totally defenseless when he went out of his hiding place. He was 71 years old at the time of his death. His left hand was extended as if in supplication and surrender but accused-appellant shot him nonetheless. The victim immediately died from the gunshot wound.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Br. 36, Iloilo City in Criminal Case No. 37116, finding accused-appellant Edwin Tanoy guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Ricardo L. Espinosa P50,000.00 as death indemnity and P43,060.00 as burial and funeral expenses, is AFFIRMED. With costs.

SO ORDERED. YNARES-SANTIAGO, J

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Decision penned by Judge Quirico G. Defensor, Rollo, pp. 34-35.

[2] Rollo, p. 37.

[3] Id., p. 38.

[4] Id., pp. 88-89.

[5] Id., p. 90.

[6] *People v. Villonez*, 298 SCRA 568 (1998)

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