

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS, RICARDO BENITEZ Y CABREROS, ACCUSED-APPELLANT.

G.R. No. 116618. November 21, 1996

Ponente: PUNO, J.

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PUNO, J.:

The case at bar involves murder on Christmas eve and the protagonists are military servicemen. Appellant RICARDO BENITEZ y CABREROS, a member of the Philippine Marines, was charged with and convicted of murder for the death of Philippine Constabulary soldier EDWIN TIZON. The Information against him, dated January 26, 1982, reads:[1]

"That on or about December 24, 1981, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name, identity and whereabouts are still unknown and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one EDWIN TIZON Y TUICO by then and there shooting him with a firearm, hitting him on the head thereby inflicting upon the said EDWIN TIZON Y TUICO a mortal wound which was the direct and immediate cause of his death thereafter.

"Contrary to law."

Only appellant was arrested by the police. The whereabouts of his companion. Likewise a soldier of the Philippine Marines, remains unknown.

Upon his arraignment, appellant pled not guilty. Trial proceeded against him.

The facts: EDWIN TIZON was formerly employed with the Pañeros Disco House in Sta. Mesa, Manila, as a security guard. In 1978, Tizon resigned and joined the Philippine Constabulary.[2]

In early morning of December 24, 1981, Tizon decided to visit the Pañeros Disco House and join his former co-employees in celebrating Christmas. He thought that the staff would be holding their Christmas party that day.[3]

On said date and time, appellant RICARDO BENITEZ y CABREROS, a soldier of the Philippine Marines detailed at the Malacañang Compound, Manila, together with his companion, also a Marine soldier, went to Pañeros Disco. Between 2:00 a.m. and 2:30 a.m., a commotion erupted when appellant and his friend left the disco without paying their bill.[4]

EUTQUIANO APAN, the disco's timekeeper, and the victim Edwin Tizon were standing outside, by the door of the disco. When they saw appellant and his companion get into a taxi without settling their account, Apan pursued them. Seated inside the taxi, appellant adamantly refused to pay and started cursing Apan. When Apan insisted on collecting the bill, appellant shoved a .45 cal. Gun to his face. The barrel of a gun did not daunt Apan.[5] Seeing that Apan would not let them go, appellant grudgingly settled his account with the disco. However, even after

paying, appellant still raged against Apan. At this stage, the victim Tizon intervened and introduced himself as a military man. He assured Apan he would take care of the situation.[6]

Appellant then demanded for Tizon's I.D. Instead, Tizon asked appellant to show his I.D. first. The demand angered appellant. A heated altercation flared up between Tizon and appellant for the latter stubbornly refused to show his I.D. Appellant and his companion then dragged Tizon by the hand and led him towards the Sta. Mesa bridge. After about fifteen (15) meters, the three stopped at the foot of the bridge, near a Meralco lamp post. Apan saw Tizon raise his arms in surrender. Appellant pushed Tizon, pulled a gun from his waist and shot him. Appellant and his companion then fled and headed towards Hipodromo Street.[7] Tizon fell by the lamp post of the Sta. Mesa bridge and was brought to the UERM Hospital by Pepito Yatco, supervisor of the disco. He was pronounced dead on arrival, another crime statistic.[8]

The shooting incident was also witnessed by two (2) other disco employees, namely chief comptroller Ronillo Melgar and floor manager Josephine Vitualla. They were outside the disco, about 15-17 meters away from the scene of the crime.[9] They gave their written statements to the police investigators immediately after the incident. They narrated substantially the same facts as testified to by Apan.[10]

Appellant interposed alibi as a defense. He claimed he could not have committed the crime on said date and time for he was on duty as a guard at the madrigal Gate 1 of the Malacañang Compound. Appellant alleged that his tour of duty commenced at 12:00 midnight of December 24, 1981 and ended four (4) hours later, or at 4:00 a.m. of the same day. Appellant testified that during his four-hour duty, he never left his post. In support of his claim, he presented the Gate 1 logbook (Exh. "5") showing that he assumed guard duty at 12:00 midnight of December 24, 1981. The logbook also showed that he was relieved by Sgt. Pablito Gatdula at exactly 4:00 a.m. of December 24, 1981. The logbook also contained several entries made by appellant during his tour of duty, viz:

"0150 H (SG) conducted inspection to (sic) marine guard

"0200 H 1 Lt. Ancheta J. aboard madrigal compound

"0125 H Capt. Casipit F. Passed by Madrigal gate and his driver

"0300 H no incident happened during my tour of duty

"0400 H properly held by the relieving guard and turn over to him all guard properties"

At the end of his duty, appellant said he proceeded to their barracks within the Malacañang Compound. He further alleged that they were on red alert from December 16, 1981 to January 6, 1982 and were not allowed to leave their barracks at any time during said period.[11]

He testified that it was only on January 25, 1982 that he learned he was being implicated in the case at bar. He was then at the police precinct 4, substation 4, along Hipodromo Street, assisting his neighbor's son, Arturo Guerrero, who was being investigated by the police. Suddenly, a tamaraw jeep pulled up at the station with about ten (10) policemen alighting. The policemen frisked him and his friend (a PC soldier) and handcuffed them. They were brought to police station 4 in Balic-Balic, Manila, where he was informed that he was a suspect in the killing of Edwin Tizon at the Pañeros Disco. He denied knowledge of the crime. After a few minutes, the police released his soldier friend but detained him.[12]

Appellant further claimed that he does not know prosecution eyewitnesses Apan, Vitualla and Melgar. He said he saw the three for the first time in court, when they testified against him and pointed to him as the gunman.[13]

On April 19, 1994, appellant was convicted by the trial court of the crime charged. The dispositive portion of the Decision[14] reads:

"WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, accused RICARDO BENETIZ (sic) Y CABREROS is convicted of the crime of murder pursuant to Article 248 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided for by law, and to indemnify the Heirs of Edwin Tizon y Tuico in the sum of P20,000.00 as actual damages, and in the additional amount of P50,000.00 as death indemnity to the heirs of Edwin Tizon and for accused to pay the costs.

"SO ORDERED."

Hence this appeal.

In his Brief, appellant challenges the above Decision. Alleging that: (1) it was physically impossible for him to be at the scene of the crime at the time of its commission, and; (2) the inconsistent testimonies of the prosecution eyewitnesses should have been given credence by the trial court.

We affirm appellant's conviction.

Appellant insist that from December 16, 1981 to January 6, 1982, the soldiers stationed in Malacañang Compound had been placed on red alert and were prohibited from leaving their barracks inside the Malacañang Compound. He further claims that on the day of the incident, between 2:00 a.m. to 2:30 a.m., he was stationed at his post in Gate 1 of Malacañang. His tour of duty that day started at 12:00 midnight and ended at 4:00 a.m. of the same day. During those four (4) hours, appellant alleged that he continuously stayed in his post. In support of his stance, appellant presented the Gate 1 security logbook containing the entries he made during his four-hour tour of duty. Thus, appellant maintains that it was physically impossible for him to have committed the crime between 2:00 a.m. to 2:30 a.m. at the Pañeros Disco House in Sta. Mesa, Manila.

We disagree.

The records show that appellant himself admitted that the crime scene was only about a kilometer away from Gate 1 of Malacañang. This distance could be traversed in less than four (4) minutes even if one is travelling at a very low speed of 30 kilometers per hour.[15] Hence, although appellant was allegedly at his post in Gate 1 from 12:00 midnight to 4:00 a.m. on said date, as indicated in the security logbook, it was not physically impossible for him to have left his post at any time during this period and proceeded to the Pañeros disco.

Moreover, although the Gate 1 logbook had an entry allegedly made by appellant that at about 2:15 a.m., one Capt. Casipit and his driver passed by said gate, neither Capt. Casipit nor his driver was presented in court to corroborate appellant's logbook entry. Noticeably, the next entry in the logbook allegedly made by appellant at 3:00 a.m. was a general statement that no incident happened during his tour of duty. This entry could have been made by appellant after his involvement in the shooting incident at 2:30 a.m. and prior to his relief from duty at 4:00 a.m. More significantly, we note that none of the defense witnesses, all of whom were soldiers stationed in Malacañang, declared that they saw appellant at his post on that day for the entire time frame of 2:00 a.m. to shortly before the end of his duty at 4:00 a.m. In fact, marine soldier Domingo Ledesma admitted that the last time he saw appellant was when the latter reported for duty at Gate 1 at 12:00 midnight of December 24, 1981 and he had no idea what appellant did during his four-hour tour of duty.[16] Likewise, defense witness Sgt. Pablito Gatdula testified that he only saw appellant at 4:00 a.m. that day when he relieved appellant at his post.[17] Only defense witness Sgt. Cresenciano Perio established appellant's presence at Gate 1 when the former inspected said post at about 1:50 a.m. However, Sgt. Perio stayed only for about three (3) minutes or until about 1:53 a.m.[18] That still left appellant more than enough time to leave his post and go to Pañeros Disco which was only a kilometer away from Gate 1. We thus hold that appellant's claim he was at his post at the time of the incident is not adequately supported by the defense's documentary and testimonial evidence. His defense of alibi must

performer fail, especially in the light of the positive identification made, not by one, but by three credible eyewitnesses.

Appellant also faults the trial court for giving more credence to the inconsistent testimonies of the prosecution eyewitnesses. He capitalizes on the testimony of eyewitness Ronillo Melgar that he did not notice appellant inside the disco that night. He also points that although prosecution eyewitness Josephine Vitualla testified that the incident happened between 2:00 a.m. to 2:30 a.m., nonetheless, on cross-examination, she declared that the first time he saw appellant on said date was at 4:00 a.m. On the basis of the foregoing, appellant urges this Court to disregard their entire testimony.

Appellant's submission is untenable. A thorough examination of their testimonies reveals that the minor inconsistencies cited by appellant cannot adversely affect the said witnesses' credibility. On the whole, we find that their account and detailed narration of the events leading to the shooting of the victim tally on all material points. It was probable that Apan did not notice appellant while the latter was inside the disco for Apan, as timekeeper, stood outside, by the door of the disco. Moreover, a review of the records discloses that all three eyewitnesses declared, both in their written statements and in open court, that the shooting happened sometime between 2:00 a.m. to 2:30 a.m. of December 24, 1981.[19]

To be sure, each of the three prosecution eyewitnesses categorically identified appellant as the malefactor and we find no reason to doubt their identification. The shooting did not happen at the wink of an eye as to leave these witnesses no time to recognize the appellant. It will be recalled that the shooting was preceded by an altercation attracting scene created by appellant when he and his soldier companion refused to pay their bill at the Pañeros Disco. They were insisting that it was one of their privileges as military servicemen. At that time, Apan was with Tizon. The two were standing by the door of the disco. When appellant and his friends left the disco, Apan ran after them and demanded their payment. A shouting match ensued between Apan and appellant, and the latter, at one point, drew his gun and shoved it to Apan's face. Apan, nevertheless, stood his ground. After a while, appellant, still furious, grudgingly settled his account. Feeling the tension, Tizon, the victim, intervened and introduced himself as a PC soldier. Appellant and his companion turned their ire on Tizon. They pulled him aside and walked with him for a few meters towards Sta. Mesa bridge. Appellant then pulled the trigger on the hapless victim. All these transpired in full view of the employees of the disco club who immediately related the shooting to the police investigators. The time and spacing of the shooting gave these witnesses ample opportunity to identify appellant. It is thus hard to believe that they could have been mistaken in identifying appellant as the malefactor. Moreover, the credibility of these eyewitnesses could not be questioned for there is nothing on the record to suspect that they would perjure themselves. Prior to the incident, appellant was unknown to them. The first time they saw appellant was on the day of the shooting.[20] So it was for appellant. He admitted that the prosecution witnesses were not known to him. Indeed, appellant could not suggest any reason why these strangers would falsely testify against him.[21]

We find that appellant's guilt has been proved beyond reasonable doubt. Moreover, we hold that the trial court correctly appreciated the qualifying circumstance of treachery in the commission of the crime, appellant's attack having been made swiftly while the victim's hands were raised in an act of surrender, rendering the latter incapable of defending himself. The presence of treachery qualified the killing to murder.

IN VIEW WHEREOF, the impugned Decision of the trial court finding appellant RICARDO BENITEZ y CABREROS guilty of murder is AFFIRMED in toto. Cost against appellant.

SO ORDERED.

Regalado (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

- [1] Original Records, p. 1.
- [2] TSN, January 13, 1983, p. 15; TSN, April 14, 1983, p. 19.
- [3] TSN, January 13, 1983, p. 26.
- [4] Id., pp. 21-22.
- [5] Id., p. 27.
- [6] Id., pp. 35-39.
- [7] Id., pp. 22-23.
- [8] TSN, April 14, 1983, p. 10.
- [9] TSN, January 13, 1983, p. 5; TSN, April 14, 1983, p. 5.
- [10] Id., pp. 3-16; Id., pp. 3-16.
- [11] TSN, July 12, 1983, pp. 16-17; TSN, November 8, 1983, p. 16; TSN, October 16, 1984, pp. 1-4.
- [12] TSN, October 16, 1984, pp. 5-13.
- [13] Id., pp. 13-15.
- [14] Penned by then Judge, now Comelec Commissioner Teresita Dy-Liaco Flores, Regional Trial Court, National Capital Judicial Region, Branch 46, Manila; Rollo, pp. 60-67.
- [15] TSN, December 13, 1989, p. 9.
- [16] TAN, August 16, 1983, pp. 17-18.
- [17] TSN, November 8, 1983, p. 18.
- [18] TSN, February 27, 1984. Pp. 17-18, 22.18
- [19] TSN, January 13, 1983, pp. 3 & 18; TSN April 14, 1983, p. 4.
- [20] TSN, January 13, 1983, pp. 12 & 23; TSN, April 14, 1983, p. 12.
- [21] TSN, January 13, 1983, p. 10.

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