

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLANT, VS. PONCIANO RIVERA, ACCUSED-APPELLANT.

G.R. No. 117471. September 03, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Ilagan, Isabela, Second Judicial Region, Branch 18, finding the accused-appellant Ponciano Rivera guilty of murder for the killing of his common-law wife Romana Vda. de Rivera on December 4, 1992 and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased P50,000 as indemnity.

The facts are as follows:

On the night of December 4, 1992, accused-appellant was having drinks with Glenn Rivera, Warlito Andaya, Ruben Gazzingan, and a certain Totoy Panag in his house in Sta. Victoria, Naguilian, Isabela. After a while, shots were heard from the kitchen and Romana, who was there preparing dinner with her daughter Natividad Andaya, was found to have been shot twice from behind.[2] She died instantly as a result of two gunshot wounds.

The following day, accused-appellant reported to the police that his wife had been killed by unidentified men. However, the victim's daughter, Natividad, and her husband, Warlito, gave sworn statements to the police identifying accused-appellant Ponciano Rivera as the gunman.[3] On the basis of their statements, the police filed a complaint for murder against accused-appellant. A preliminary examination was thereafter conducted by the Municipal Circuit Trial Court which found probable cause against accused-appellant.[4] Consequently, a warrant was issued and accused-appellant was arrested on December 14, 1992.[5]

On December 23, 1992, he was released on bail, after posting a bail bond in the amount of P30,000.00.[6]

On March 4, 1993, an information for murder was filed against accused-appellant, alleging -

That on or about the 4th day of December, 1992, in the municipality of Naguilian, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with evident premeditation, treachery, and abuse of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly, and without giving her [a] chance to defend herself, assault, attack and shoot for several times with a homemade Caliber .38 revolver marked Smith Wesson one Romana Vda. de Rivera, inflicting upon her multiple gunshot wounds on the different parts of her body and head, which directly caused her death. [7]

Trial then ensued with the prosecution presenting five witnesses, namely, Natividad Andaya, Warlito Andaya, Kagawad Pedro Lelina, Barangay Captain Luis Balubal, and Glenn Rivera.

Natividad Andaya testified that, on the night of December 4, 1992, she was in the kitchen with her mother Romana Vda. de Rivera, helping her prepare dinner.[8] She said that accused-appellant, who is her stepfather, and her mother had a quarrel because accused-appellant had been asking her mother for money, but the latter refused

to give him any. According to Natividad, as a result of the quarrel, accused-appellant shot Romana twice from behind. Natividad called for help upon seeing her mother wounded and her brother Glenn Rivera, who was drinking in front of the stairs of the house came rushing, even as accused-appellant fled. After a while, others also entered the house. Natividad reported the incident to the authorities on December 8, 1992, three days after accused-appellant had reported the same incident.[9]

On cross-examination, Natividad said that accused-appellant and her mother began living together as husband and wife when she was thirteen years old. Accused-appellant Ponciano Rivera had left his wife Corazon to live with Romana. The relationship lasted eleven (11) years. Natividad said that she and her siblings often stayed out of the house because accused-appellant was a very violent person. As a young child, she had been maltreated by accused-appellant. When asked why in her sworn statement to the police she stated that she did not actually see the accused-appellant shoot her mother but only suspected him as the one who did, she explained that she did not then categorically state it was accused-appellant who shot her mother because she was afraid of him. According to Natividad, after shooting Romana, Ponciano Rivera returned to the kitchen. At that time, there were already several persons inside the house, including the barangay captain and other barangay officials who conducted an investigation. Natividad's husband, Warlito, took her away for fear that she might be the next victim.[10]

Warlito Andaya next testified. He said he was in the house of accused-appellant in the afternoon of December 4, 1992. He was one of those invited by accused-appellant to have drinks. The other ones invited were Glenn Rivera, Ruben Gazzingan, and Totoy Panag. The group stayed in front of the stairs of accused-appellant's house. Warlito's wife was with the victim in the kitchen preparing dinner. According to Warlito, accused-appellant left the group and went to the kitchen. After a while, he heard his mother-in-law shouting at accused-appellant, although he did not understand what they were quarreling about. He then heard two gun reports. He rushed to the kitchen and there saw his brother-in-law, Glenn Rivera, and his wife, Natividad, holding Romana in their arms. Romana's mouth and arms were covered with blood. Warlito went to Kagawad Simoneo Martinez to seek help, but the latter advised him to go to the barangay captain. He did not go to the barangay captain right away. Instead, he went back to accused-appellant's house where he was informed by his wife Natividad that it was accused-appellant who killed Romana. He said that upon being told this, he covered his wife's mouth with his hands and took her out of the house, and they went to the house of Kagawad Andres Agbunot. They reported the matter to him and pointed to accused-appellant as the one who killed Romana. Warlito claimed that during the wake of Romana, accused-appellant took him to their house and there gave him a short firearm, telling him to "get this gun so that we shall have something to use to revenge [sic] the death of your mother-in-law." As he was afraid to keep the gun, he gave it to Kagawad Pedro Lelina on December 9, 1992. It was later surrendered to the police authorities.[11]

On cross-examination, Warlito testified that accused-appellant and his mother-in-law had been living as husband and wife before he and Natividad got married.[12] It was his mother-in-law who had built the house where accused-appellant was living. On December 4, 1992, at around 8:00 in the evening, accused-appellant invited him and others to have some drinks. It was the first time that he had drinks in the house of his mother-in-law. After accused-appellant had gone to the kitchen, he heard the gun reports. Warlito rushed to the kitchen as he heard his wife screaming. He later went to the police station with the barangay captain to report the matter.[13]

Barangay Captain Luis Balubal[14] and Kagawad Pedro Lelina[15] corroborated the testimony of Warlito Andaya with respect to the surrender of the gun which was allegedly given by accused-appellant to said witness.

The prosecution's last witness was Glenn Rivera. He testified that on December 4, 1992, he was in accused-appellant's house having drinks with Warlito Andaya, Ruben Gazzingan, Totoy Panag, and accused-appellant; that accused-appellant had a gun tucked in the right side of his waist; that for some reason

accused-appellant was angry and he went to the kitchen; that shortly after, he heard two gun reports from the kitchen; that he rushed to the kitchen and saw Manang Naty (Natividad) carrying the lifeless body of their mother.[16]

On cross-examination, this witness testified that he left for Cauayan on December 5, 1992 to contact his sister in Australia; that he came back to Naguilian on December 9, 1992; that he did not anymore bother to give any statement to the police authorities because they transferred the remains of his mother to Cabatuan.[17]

The defense presented two witnesses: accused-appellant himself and Ruben Gazzingan.

Ruben Gazzingan said he was one of those having drinks in the house of accused-appellant and Romana Vda. de Rivera. He claimed he heard gun reports but, thinking they were simply the sound of firecrackers, he did not move from where he was. According to this witness, accused-appellant was at that time beside him pouring gin and he did not know who shot Romana.[18] He also said that he helped Natividad and Glenn take Romana to the bedroom on the upper floor of the house, as accused-appellant got a bolo and went out to look for the assailant.[19]

On cross-examination, said witness testified that he was originally going to testify for the prosecution, but he changed his mind because he did not want to tell lies and he thought the prosecution was just out to put accused-appellant down. He claimed he had been promised P20,000.00 plus the price of one carabao if he testified for the prosecution.[20]

Accused-appellant Ponciano Rivera was the last to take the witness stand for the defense. He confirmed that he and Romana had maintained a common-law relationship since 1981, although his wife Corazon Taging was still alive. He said that he had five children with Corazon and two with Romana; that he and Romana acquired four carabaos and three hectares of land; that his stepson, prosecution witness Glenn Rivera, worked their three-hectare land; that one carabao had to be sold in order to pay for Glenn's matriculation at Manantan Technical Institute while another one had to be sold in order to raise capital for business; and, that all the proceeds and fruits of the land were being enjoyed by his stepchildren. Accused-appellant testified that on December 4, 1992, at around 6:00 in the evening, he was in front of his house with Glenn Rivera, Warlito Andaya, Ruben Gazzingan, and Totoy Panag with a bottle of beer grande to drink. His common-law wife Romana was in the kitchen with her daughter Natividad Andaya. All of a sudden, he said he heard two gun reports, which he thought were exploding firecrackers. He denied that he had a firearm at that time and that he shot Romana twice. He also denied that he gave a gun to Warlito Andaya. Accused-appellant said he had treated his stepchildren well and had even sent them to school. He accused Glenn Rivera and Natividad Andaya, both of whom had testified against him, of being interested in the properties which he and Romana had acquired during their coverture.[21]

On cross-examination, the accused-appellant reiterated his testimony on direct examination and added that this was the first time that he was criminally charged in court.[22]

Glenn Rivera was recalled to the stand to rebut statements made by accused-appellant and Ruben Gazzingan. He claimed that it was his sister Susan in Australia who paid for his education at the Manantan Technical Institute; that this was evidenced by bank documents; and, that it was also his sister Susan who gave money to their mother Romana in order to build a house in Sta. Victoria. Glenn refuted Ruben Gazzingan's testimony that he finally testified for the defense because the prosecution was trying to put accused-appellant down. Rivera said Gazzingan turned hostile because he was not given the money that he was asking as condition for testifying for the prosecution.[23]

On cross-examination, Glenn elaborated on his claim that Ruben Gazzingan demanded money from him.

Gazzingan demanded P20,000.00 and a carabao to be given in January 1994 in exchange for his testimony. However, because Glenn could not meet Gazzingan's demand, the latter testified for the defense.[24]

On August 30, 1994, the trial court rendered a judgment finding accused-appellant guilty beyond reasonable doubt of the crime of murder. The dispositive portion of its decision states:[25]

WHEREFORE, judgment is hereby rendered finding the accused PONCIANO RIVERA @ PONCING guilty beyond any reasonable doubt of the crime of MURDER as provided for and penalized under Article 248 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA in its maximum period, to indemnify the heirs of Romana Vda. de Rivera the sum of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs. The bailbond of the accused is cancelled.

SO ORDERED.

Hence, this appeal. Accused-appellant contends:

- A. The trial court erred in giving credence to the evidence of the prosecution in spite of its biased, rehearsed, and ill-motivated witnesses.
- B. The trial court erred in failing to establish the motive of the offense considering the fact that the identity of the perpetrator is unknown.
- C. The trial court erred in convicting the accused of murder despite failure of the prosecution to prove the qualifying circumstance of treachery.

Accused-appellant argues that the trial court erred when it relied on the testimony of witness Natividad Andaya pointing to accused-appellant as the assailant. Accused-appellant contends that Natividad's testimony is in conflict with her sworn statement before the police authorities. He points out that, in her sworn statement, Natividad had merely stated that she suspected the accused-appellant to be the one who shot her mother.

Natividad explained that in her statement to the police she did not positively identify accused-appellant because she was afraid of accused-appellant. It is contended, however, that accused-appellant was already detained at the time Natividad gave her statement. Furthermore, both Glenn Rivera and Warlito Andaya failed to identify the accused-appellant as the assailant. Accused-appellant thinks the three witnesses want him out of their way so that they could enjoy the fruits of his and Romana's labors.

Accused-appellant also contends that the prosecution failed to establish motive on his part. It is unlikely and contrary to common experience for a person to kill his common-law wife just because she refuses to give him money.

Lastly, accused-appellant claims that the qualifying circumstance of treachery cannot be appreciated as it has not been established by the prosecution that the accused-appellant deliberately or consciously employed such means of execution as to ensure the commission of the offense.

In answer, the prosecution points out that the inconsistency in Natividad's sworn statement and in her testimony in court is due to accused-appellant's "moral ascendancy over her and the fear and grudging respect [she has] for [accused-appellant]." The Solicitor General contends that accused-appellant's motive for committing the crime charged was established by Natividad's testimony and says that persons "have been known to be killed for petty reasons or for no reason at all." Finally, he argues that there was treachery in this case, considering that the attack on the victim was deliberate, sudden, and unexpected and, moreover, was made from behind.

The appeal has no merit.

The inconsistency referred to by accused-appellant relates to the following portion of the testimony of Natividad Andaya:[26]

Q I am calling your attention to question No. 7 of your sworn statement given to the Police on December 9, 1992, and subscribed and sworn to before the Municipal Judge on December 11, 1992 as follows: "Question No. 7. Who shot her?" And your answer is, "Am suspecting my step father as the one who shot her." Do you remember that the question was asked you and you gave that answer to the question?

A Yes, sir, I gave that answer but I was afraid to add more because he (my stepfather) always had a razor in his pocket.

Accused-appellant claims that he could not have threatened Natividad because at the time she gave her statement to the police, he was already detained. This is not true. Natividad Andaya's sworn statement was executed on December 9, 1992 while accused-appellant was detained only on December 14, 1992. It is noteworthy that on the same day that accused-appellant was detained, Natividad Andaya testified at the preliminary examination conducted by the Municipal Circuit Trial Court judge that she had indeed witnessed accused-appellant shooting her mother. She repeated this in her testimony before the Regional Trial Court.

As the trial court observed:

Against her straightforward manner of testifying in Court, the accused would impugn the credibility of Natividad by citing her sworn statement taken by the police on December 9, 1992 (p. 2, record), wherein Natividad merely suspected the accused. This is not hard to understand. Natividad was only 13 years old when the accused took her mother as a concubine and lived with them for more than ten (10) years. His moral ascendancy over her and the fear and grudging respect for the accused must have made Natividad to keep herself together for the proper moment. We have observed her deportment and demeanor on the witness stand, she was never evasive even on cross-examination. We do not find any cogent reason to discredit her testimony in open court as against her statement in the police [sic] which, like any other statement before police investigators is prepared with loose dangling ends subject to be exploited by the defense. As a matter of fact, in the preliminary examination conducted by the MCTC Judge on December 14, 1992, Natividad, without fear or hesitation identified the accused as the killer of her mother. The accused was already detained when she made this statement.[27]

In addition, it is a matter of judicial experience that an affidavit, being taken ex-parte, is almost always incomplete and often inaccurate.[28] It lacks the directness of testimony given in response to questioning, either by the prosecutor or by the defense counsel.

Indeed, irrespective of positive identification, sufficient circumstantial evidence exists to support the trial court's finding that accused-appellant killed his wife. Under the Rules of Court, circumstantial evidence is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all circumstances is such as to produce conviction beyond reasonable doubt.[29]

In this case, Natividad Andaya, who was in the kitchen with her mother, said that accused-appellant and her mother were quarreling and immediately thereafter shots rang out and she saw her mother die instantly.[30] Her testimony is corroborated by her husband, Warlito Andaya, who testified as follows:[31]

Q

And while having a drinking spree with Ponciano Rivera, Glenn Rivera and Ruben Gazzingan, do you remember if there was any unusual incident that happened?

A

When Ponciano Rivera entered the kitchen I heard shouting.

Q

Who was shouting?

A

Romana Rivera, my mother-in-law.

Q

With whom was your mother-in-law shouting, if you know?

A

My mother-in-law and Ponciano Rivera were shouting at each other.

Q

Do you know what was the shout all about between Ponciano Rivera and Romana Rivera?

A

No, sir.

Q

And while they were shouting at each other, what happened if you know?

COURT:

Q

What words did you hear when you heard they were shouting at each other?

A

I did not understand.

FISCAL DE ALBAN:

Q

And what happened when they were shouting at each other?

A

I heard gunshots.

Q

And how many gunshots did you hear?

A

Two (2).

Q

And where did the gunshots come?

A

From the kitchen.

and by her brother, Glenn Rivera, who testified:[32]

Q

By the way while you were drinking beer, did you notice any [sic] unusual from your companions?

A

There is, sir.

Q

What is that unusual thing that you noticed from them?

A

Ponciano Rivera was very angry, sir.

Q

Aside from being very angry that you noticed from Ponciano Rivera, what else?

ATTY. LABOG:

Leading, Your Honor.

COURT:

Witness may answer.

A

He has a gun tucked on his waist, sir.

FISCAL DE ALBAN:

In what part of his waist was the gun tucked?

A

On the right side of his waist, sir.

Q

Aside from that what else did you notice from him while you were drinking?

A

He went to the kitchen, sir.

Q

And after that what happened when he went to the kitchen?

A

I heard two (2) gunshots, sir.

Q

And from what direction did you hear those gunshots?

A

From our kitchen, sir.

Accused-appellant himself claims that he was in front of their house while the victim and Natividad Andaya were both in the kitchen preparing dinner. He said:

Q

On December 4, 1992, at about 6:00 o'clock in the evening, do you remember where were you?

A

Yes, sir.

Q

Where were you?

A

I was in front of our house sir.

Q

House in what place?

A

At Sta. Victoria, Naguilian, Isabela.

Q

Were you alone in front of your house that evening?

A

We were many, sir.

Q

Who were you?

A

Warlito Andaya, Ruben Gazzingan, Totoy Panag.

Q

Who else?

A

And I, sir. [33]

....

Q

Where was your wife Romana Rivera on December 4, 1992? at about 6:00 o'clock that evening?

A

She was at the table.

Q

Where was that table located in relation to your house that night?

A

In our kitchen.

Q

What was she doing if you know?

A

She was shre[d]ding the malunggay leaves.

Q

Was she alone?

A

She was alone in the table.

Q

But inside the kitchen was she alone?

A

They were two.

Q

Who was the other one?

A

Natividad Andaya.

Q

Natividad Andaya your stepdaughter who testified against you in this case?

A

Yes, sir.[34]

To summarize, the testimonies of the witnesses show that -

(1) accused-appellant was drinking at the time of the incident;

(2) he had a gun in his possession;

(3) after a while, accused-appellant left his group and went to the kitchen where he had an altercation with the victim;

(4) gun reports were heard during the altercation; and

(5) during the commotion following the discovery of the victim's body, accused-appellant disappeared and did not come back until after several minutes.

These circumstances are such that they constitute an unbroken chain which leads to only one fair and reasonable conclusion: that accused-appellant is guilty of killing his wife.[35]

However, we agree with accused-appellant that the qualifying circumstance of treachery was not established. Surveying the leading decisions on this question, in *People v. Romeo Magaro*[36] we recently stated:

In *People v. Magallanes*, this Court held:

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. Thus, for treachery or alevosia to be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him. . . .

. . . where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected As has been aptly observed the accused could not have made preparations for the attack, . . . ; and the means, method and form thereof could not therefore have been thought of by the accused, because the attack was impulsively done.

Treachery cannot also be presumed from the mere suddenness of the attack. . . . In point is the following pronouncement we made in *People v. Escoto*:

We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an attack, does not of itself, suffice to support a finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental

In *People v. Bautista*, it was held:

. . . The circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of alevosia necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself....

Applying these principles to the case at bar, we hold that the prosecution has not proven that the killing was committed with treachery. Although accused-appellant shot the victim from behind, the fact was that this was done during a heated argument. Accused-appellant, filled with anger and rage, apparently had no time to reflect on his actions. It was not shown that he consciously adopted the mode of attacking the victim from behind to facilitate the killing without risk to himself. Accordingly, we hold that accused-appellant is guilty of homicide only.

WHEREFORE, the decision of the trial court is **AFFIRMED** with the **MODIFICATION** that accused-appellant is declared guilty of homicide and sentenced to an indeterminate sentence of 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum, with the accessory penalties provided by law.

SO ORDERED.

Melo, Puno and Martinez, JJ., concur.
Regalado, J., (Chairman), on leave.

[1] Per Executive Judge Juan A. Bigornia, Jr.

[2] Rollo, p. 21.

[3] Records, pp. 1-5.

[4] Id., p. 21.

[5] Id., pp. 22-25.

[6] Id., pp. 27-36.

[7] Id., p. 43.

[8] TSN, pp. 5-6, July 14, 1993.

[9] Id., pp. 7-15.

[10] Id., pp. 16-30.

[11] TSN, pp. 6-15, Nov. 19, 1993.

[12] Id., pp. 21-22.

[13] TSN, pp. 4-21, Nov. 24, 1993.

[14] TSN, pp. 1-15, Jan. 13, 1994.

[15] TSN, pp. 3-11, Dec. 15, 1993.

[16] TSN, pp. 16-22, Jan. 13, 1994.

[17] Id., pp. 26-28.

[18] TSN, pp. 6-14, March 4, 1994.

[19] Id., pp. 16-19.

[20] Id., pp. 22-28.

[21] TSN, pp. 4-26, April 7, 1994.

[22] TSN, pp. 1-12, April 19, 1994.

[23] TSN, pp. 3-9, May 12, 1994.

[24] Id., pp. 10-14.

[25] Rollo, p. 28.

[26] TSN, p. 24, July 14, 1993.

[27] Rollo, p. 26.

[28] *People v. Castillo*, 261 SCRA 493, 499 (1996).

[29] Rule 133, §4.

[30] TSN, pp. 7-14, July 14, 1993.

[31] TSN, pp. 7-9, Nov. 19, 1993.

[32] TSN, pp. 20-21, Jan. 13, 1994.

[33] TSN, p. 15, April 7, 1994.

[34] *Id.*, pp. 17-18.

[35] *People v. Lagao, Jr.*, 271 SCRA 51, 64 (1997); *People v. Abner Eubra y Bartolome*, 274 SCRA 180 (1997).

[36] *People v. Romeo Magaro*, G.R. No. 113021, July 2, 1998.

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