

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO ACURAM, ACCUSED-APPELLANT.

G.R. No. 117954. April 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision rendered on August 24, 1994, by the Regional Trial Court of Cagayan de Oro City, Branch 22, in Criminal Case No. 91-1161, finding accused-appellant Orlando Acuram guilty of murder.

On September 30, 1991, Assistant Provincial Prosecutor Benber Apepe charged appellant with the crime of murder, allegedly committed as follows:

"On June 29, 1991, at about 7:00 o'clock in the evening, at Poblacion, El Salvador, Misamis Oriental, which is within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill and treachery did, then and there, wilfully, unlawfully and feloniously and with the use of his armalite rifle, shoot at one Orlando[1] Manabat who was just standing on the highway waiting for a ride towards home, thus, hitting and wounding the latter on the right leg or thigh, which caused his death the following day.

CONTRARY TO and in violation of Article 248, paragraph 1, of the Revised Penal Code.[2]

Upon arraignment appellant, assisted by counsel, entered a plea of not guilty to the charge.[3] Thereafter, trial on the merits ensued. Subsequently, the trial court rendered judgment, disposing as follows:

"WHEREFORE, in the light of the foregoing facts, convincingly proved by the prosecution, the accused, ORLANDO ACURAM, is hereby found guilty beyond reasonable doubt, of the crime of MURDER, qualified by treachery, and is meted the penalty of reclusion perpetua and to indemnify the heirs of the deceased ROLANDO MANABAT the jurisprudential sum of fifty thousand (P50,000.00) pesos, without subsidiary imprisonment in case of insolvency and to pay the cost of the suit.

SO ORDERED."[4]

The records disclose that on June 29, 1991, at around seven o'clock in the evening, Rolando Manabat, Oscar Manabat, Bartolome Nabe, and Peterson Valendres, after the day's work, proceeded to the market in El Salvador, Misamis Oriental, to buy fish. Since no fish was available at that time, they decided to head for home instead. They went to the national highway, stood at the right side facing east towards the direction of Cagayan de Oro City and waited for a ride there. They flagged down an approaching passenger jeepney which, however, swerved dangerously towards them. At this juncture, Rolando Manabat shouted at the jeep "Pesteng yawa-a kamo, Manligis man kamo " (You devils, why did you try to run over us?). A passenger inside the jeepney shouted back, "Noano man diay, isog mo?" (Why? Are you brave?). Immediately thereafter, two gunshots rang out in the air, accompanied by sparks coming from the front right side of the jeepney. Then Rolando shouted, "Agay. I was shot." The vehicle did not stop but instead speeded towards the direction of Cagayan de Oro City. Wounded on the right knee, Rolando was brought by his companions to the Cagayan de Oro Medical Center. Later on, they were informed that Rolando needed blood transfusion and so they transferred him at around 11:25 P.M. to the

Northern Mindanao Regional Hospital in the same city.

Upon arrival at the hospital, Rolando was examined by Dr. Ismael Naypa, Jr. The doctor found the victim's blood pressure to be just forty over zero (40/0) and the victim's right leg was heavily bandaged. He decided to operate on the victim when the latter's blood pressure stabilized. At about 5:00 A.M. the following day, the victim underwent surgery. Unfortunately, the victim died at around 11:00 A.M. Dr. Naypa later testified that the cause of Rolando's death was "secondary to huddle respiratory syndrome secondary to blood loss, secondary to gunshot wounds", or briefly, massive loss of blood due to gunshot wound. He stated that under normal circumstances, the wound would not necessarily cause death but in this case where the wound transected the major part of the leg, the wound was fatal. He clarified that the victim sustained only one gunshot wound which entered at the front portion of the right knee and exited at the back of the right knee, causing two wounds.[5]

The El Salvador police conducted investigation on the incident. It was discovered that appellant Orlando Acuram, a policeman assigned with the 421st PNP Company based at San Martin, Villanueva, Misamis Oriental, was among the passengers of the errant jeepney. He was seated at the front, right side of the jeepney and was the only one among its passengers who was carrying a firearm. Pending investigation, he was restricted to the camp effective July 1, 1991, upon orders of his commanding officer, Major Rodolfo De La Piedra.[6] Appellant was later surrendered by his commanding officer to the custody of the court on the basis of the warrant of arrest issued by MCTC Judge Evelyn Nery.[7] On motion by the prosecution and without objection from the defense, the trial court suspended appellant from the service and ordered his detention at the provincial jail.[8]

During the trial, appellant admitted that he was on board the mentioned jeepney and had a gun at that time but denied firing it. He claimed that it was impossible for him to fire his rifle during that time since he was sitting at the front seat of the jeepney, sandwiched between the driver and the latter's father-in-law. Moreover, he said that the rifle was locked and wrapped by his jacket and its barrel was even pointed towards the driver.[9]

The trial court found the version of the defense weak, self-serving and unreliable. On the basis of the evidence presented by the prosecution, the court found appellant guilty as charged. Insisting on his innocence, appellant readily filed his notice of appeal.[10] In his brief, appellant raises the following errors allegedly committed by the trial court:

"I

THE TRIAL COURT GRAVELY ERRED IN CONCLUDING THAT ACCUSED APPELLANT TOOK FLIGHT OR ESCAPED AFTER THE NIGHT OF THE INCIDENT OR IN FAILING TO CONSIDER THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

II

THE TRIAL COURT ERRED IN DECLARING THAT THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY, GRANTING ARGUENDO THAT THE ACCUSED APPELLANT IS GUILTY.

III

THE TRIAL COURT ERRED IN RULING THAT ACCUSED-APPELLANT IS THE PERPETRATOR OF THE CRIME CHARGED, DESPITE THE FACT THAT ACCUSED WAS NOT PROPERLY AND CONCLUSIVELY IDENTIFIED, AND THE ALLEGED WEAPON NOT POSITIVELY TESTED.

IV

THAT THE TRIAL COURT GRAVELY ERRED IN DISREGARDING EVIDENCE POINTING TO THE INNOCENCE OF THE ACCUSED-APPELLANT, THAT IS, THE EXISTENCE OF EFFICIENT INTERVENING CAUSE, WHICH IS THE PROXIMATE CAUSE OF THE DEATH OF THE VICTIM."[11]

We shall take up in seriatim the challenges posed by appellant to the credibility and sufficiency of the evidence for the prosecution. We shall also consider the weight and credibility of his defense.

To begin with, while appellant denies that he fled and hid after the shooting incident, we find that his behavior proves otherwise. Appellant admits that he was at the scene of the crime at the time the shooting happened. Considering that he is a law enforcement officer, the unusual incident should have at least elicited his curiosity and he should have inquired about it. However, he chose to ignore the incident and go his way.[12] That a policeman could display such indifference to a crime committed in his presence is highly incredible. While it was true that he reported for duty the day after the incident, the following day, he was ordered by his commanding officer restricted within the camp pending investigation of the case. By this time, appellant must have learned that his commanding officer had received a radio message and that he was already a suspect. As the trial court noted, no superior officer will hold back from any of his men involved, such a grave charge. Despite these, appellant did not present himself before the police in El Salvador, Misamis Oriental. Instead, he was conveniently nowhere to be found.

Thus, appellant's first contention that he is entitled to the mitigating circumstance of voluntary surrender, in our view, is quite untenable. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save them the trouble and expense necessarily incurred in his search and capture.[13] In this case, it was appellant's commanding officer who surrendered him to the custody of the court. Being restrained by one's superiors to stay within the camp without submitting to the investigating authorities concerned, is not tantamount to voluntary surrender as contemplated by law. The trial court is correct in not appreciating the mitigating circumstance of voluntary surrender in appellant's favor.

On his second assignment of error, however, we find convincing merit. Appellant asserts that the trial court erred in concluding that the killing was qualified by treachery. On this point, we agree. For treachery to be considered an aggravating circumstance, there must be proof that the accused consciously adopted a mode of attack to facilitate the perpetration of the killing without risk to himself.[14] In this case, the shooting was done at the spur of the moment. As observed by the trial court, the victim had shouted damning curses at the driver and the passengers of the jeepney. The shooting was an instantaneous response to the cursing, as appellant correctly claimed.[15] Treachery cannot be appreciated where the accused shot the victim as a result of a rash and impetuous impulse rather than from a deliberate act of the will.[16]

Thirdly, appellant contends that the trial court erred in ruling that he was the perpetrator of the crime. He claims he was not conclusively identified and the alleged fatal weapon was not positively tested. True, prosecution witnesses did not positively identify appellant as the one who fired the gun at the victim. Nevertheless, direct evidence of the commission of the crime is not the only matrix where the trial court may draw its conclusions and findings of guilt.[17] It is settled that conviction may be based on circumstantial evidence provided that the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[18] Circumstantial evidence could be of similar weight and probative value as direct evidence. From direct evidence of a minor fact or facts, by a chain of circumstances the mind is led intuitively, or by a conscious process of reasoning, towards a conviction that from said fact or facts some other facts may be validly inferred.[19] No greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, what is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.[20]

As noted by the trial court and the Solicitor General, the evidence for the prosecution is replete with details, duly

proven by the prosecution and to some extent by admissions of the defense, enough to sustain the guilt of appellant. These are: (1) The appellant was a former member of the Philippine Constabulary and, during the incident, was a member of the Philippine National Police. He was skilled in handling firearms. (2) The appellant was issued a firearm (armalite rifle) by his command, which he was then carrying with him before, during and after the incident. (3) At the particular date, time and place of the incident, appellant was carrying his duly issued armalite rifle inside the jeepney from where the gunfire came from. (4) The appellant was sitting on the extreme front-right-side of the jeepney where the sparks of the gunbursts were seen and heard by the witnesses. (5) There were no other persons with a rifle inside the jeepney except the appellant. (6) The empty shells of an armalite rifle were recovered at the place where the fatal shooting occurred. (7) The appellant did not go forward to the authorities to present himself until after a warrant of arrest was issued and, in fact, until his actual arrest.[21]

The aforecited circumstances taken together constitute an unbroken chain leading to a reasonable conclusion that appellant, to the exclusion of others, was responsible for the victim's death. They constitute proof beyond reasonable doubt that appellant was the perpetrator of the offense. It is the height of desperation on appellant's part to insist that there should be an eyewitness to the precise moment the shot was fired considering the sudden and completely unexpected shooting of the victim.[22] Here, circumstantial evidence suffices.

Appellant's insistence on his innocence in view of the absence of paraffin and ballistic tests, in our view, is far from convincing. Suffice it to state that even negative findings of the paraffin test do not conclusively show that a person did not fire a gun. The absence of nitrates could be explained if a person discharged a firearm with gloves on, or if he thoroughly washed his hands thereafter.[23]

Lastly, in his attempt to exculpate himself, appellant blames the death of the victim on the lack of prompt and proper medical attention given. He insists that the delay in giving proper medical attendance to the victim constitutes an efficient intervening cause which exempts him from criminal responsibility. This assertion is disingenuous, to say the least. Appellant never introduced proof to support his allegation that the attending doctors in this case were negligent in treating the victim. On the contrary, Dr. Ismael Naypa, Jr., testified that the attending doctor at the Cagayan de Oro Medical Center tried his best in treating the victim by applying bandage on the injured leg to prevent hemorrhage. He added that the victim was immediately given blood transfusion at the Northern Mindanao Regional Hospital when the doctor found out that the victim had a very low blood pressure. Thereafter, the victim's blood pressure stabilized. Then, the doctor operated the victim as the main blood vessel of the victim's right leg was cut, thereby causing massive loss of blood. The surgery was finished in three hours. Unfortunately, the victim died hours later. We cannot hold the attending doctors liable for the death of the victim. The perceived delay in giving medical treatment to the victim does not break at all the causal connection between the wrongful act of the appellant and the injuries sustained by the victim. It does not constitute efficient intervening cause. The proximate cause of the death of the deceased is the shooting by the appellant. It is settled that anyone inflicting injuries is responsible for all the consequences of his criminal act such as death that supervenes in consequence of the injuries. The fact that the injured did not receive proper medical attendance would not affect appellant's criminal responsibility. The rule is founded on the practical policy of closing to the wrongdoer a convenient avenue of escape from the just consequences of his wrongful act. If the rule were otherwise, many criminals could avoid just accounting for their acts by merely establishing a doubt as to the immediate cause of death.[24]

To conclude, since the qualifying circumstance was not proved in this case, the crime committed is only homicide, not murder. Under Article 249 of the Revised Penal Code, the applicable penalty for homicide is only reclusion temporal. As there is neither aggravating nor mitigating circumstance found by the trial court or shown after a review of the records, the penalty in this case shall be fixed in its medium period of reclusion temporal,

which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Further applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of prision mayor as a minimum to reclusion temporal in its medium period as the maximum. The range of prision mayor is from 6 years and 1 day to 12 years. The span of reclusion temporal, medium, is from 14 years, 8 months and 1 day to 17 years and 4 months.

WHEREFORE, the assailed DECISION of the Regional Trial Court of Cagayan de Oro City, Branch 22, in Criminal Case No. 91-1161, is hereby MODIFIED. Appellant Orlando Acuram is hereby found GUILTY of HOMICIDE and sentenced to suffer a prison term of 10 years of the medium period of prision mayor, as minimum, to 15 years and 10 months and 1 day of the medium period of reclusion temporal, as maximum, with accessory penalties provided by law, to indemnify the heirs of the deceased Rolando Manabat in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Corrected by witness as "Rolando" Manabat, TSN, January 13, 1992, p. 14.

[2] Rollo, p. 9.

[3] Records, pp. 29-30.

[4] Rollo, p. 56.

[5] TSN, March 4, 1992, pp. 4-15.

[6] Records, p. 13.

[7] TSN, December 29, 1992, p. 30; Records, p. 15.

[8] Records, p. 52.

[9] TSN, December 29, 1992, pp. 5-24.

[10] Rollo, p. 57.

[11] Rollo, p. 87.

[12] TSN, December 29, 1992, pp. 13-14.

[13] People vs. Ramos, 296 SCRA 559, 572-573 (1998).

[14] People vs. Quitlong, 292 SCRA 360, 382 (1998).

[15] Rollo, p. 95.

[16] People vs. Navarro, 295 SCRA 139, 146 (1998).

[17] People vs. Bermas, G.R. Nos. 76416 and 94312, July 5, 1999, p. 21.

[18] Section 4, Rule 133, Rules of Court.

[19] R.J. Francisco. Basic Evidence, p. 190 (1991).

[20] People vs. Mangat, G.R. No. 131618, July 6, 1999, pp. 7-8.

[21] Rollo, pp. 43-44.

[22] People vs. Fuertes, 229 SCRA 289, 300 (1994).

[23] People vs. Oliano, 287 SCRA 158, 177 (1998).

[24] R. and C. Aquino. I The Revised Penal Code 74, 76-77, 84 (1997).

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