

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO MANGAHAS, ACCUSED-APPELLANT.

G.R. No. 118777. July 28, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1] dated December 2, 1993 of the Regional Trial Court (Branch 16) in Malolos, Bulacan finding accused-appellant Rodrigo Mangahas guilty of murder under Art. 248 of the Revised Penal Code and sentencing him as follows:

"WHEREFORE, premises considered, herein accused is found guilty beyond reasonable doubt of the crime of murder punishable under Article 248 of the Revised Penal Code and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA with the accessory penalties provided by law; to indemnify the heirs of the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) as death indemnity; to pay the heirs of the victim the sum of FOURTEEN THOUSAND FIVE HUNDRED NINETY PESOS (p14,590.00) for funeral and burial expenses and TWENTY EIGHT THOUSAND EIGHT HUNDRED NINETY PESOS (P28, 890.00) for food during the vigil, the 9th day, 40th day and the 1st year anniversaries of the death of the victim; and to pay the costs."

The Information[2] dated November 26, 1990 charging Rodrigo Mangahas with the crime of murder reads as follows:

"That on or about the 14th day of August 1990, in the municipality of San Jose del Monte, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the said accused Rodrigo Mangahas alias Mang Rudy, armed with a gun and with intent to kill one Rufino Gestala, with evident premeditation, treachery and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said gun the said Rufino Gestala, hitting the latter on the different parts of his body, thereby causing him serious physical injuries which directly caused his death.

Contrary to law."

Upon arraignment, accused, duly assisted by counsel, entered a plea of not guilty.

In support of its case, the prosecution presented two alleged witnesses to the shooting incident, as well as the doctor who performed the autopsy on the victim. The aunt of the deceased was likewise called to testify on the civil aspect of the case.

First to testify was Police Captain Florante Baltazar, the medico-legal officer at the PC-INP, Quezon City, who conducted the examination of the cadaver of the deceased on August 14, 1990. He testified that according to the results of his post-mortem examination, the victim died from cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wounds.[3] His findings showed that the deceased sustained 3 (three) gunshot wounds, two of which were fatal as they penetrated the thoracic cavity.[4] He estimated the distance between the assailant and the victim at more than 24 inches as he did not find any powder burns on the body of the

deceased.[5]

The prosecution next presented Diosdado Padios, an alleged witness to the shooting incident. He testified that he had known the victim and the accused-appellant prior to the August 14, 1990 incident. On the said date, he saw the accused and the late Rufino Gestala drinking at a store near the latter's house in Tungkong Mangga, San Jose del Monte, Bulacan.[6] He was at the store at that particular time as he was just called by the victim to discuss some matter. While the two were drinking, he saw accused-appellant suddenly shoot Rufino Gestala, who was then seated less than one meter away from the former. He himself, was one meter away from the two when the incident occurred.[7]

On cross-examination, it was revealed that he left his former residence on September 1990 to live with a certain Cristy Balatbat, an aunt of the deceased. He admitted that while he was staying with Balatbat, he depended on her for his own subsistence.[8] He likewise admitted that he was a close friend of the deceased for more than five (5) years prior to the incident.[9]

The prosecution next presented Renato Panoso, another alleged witness to the shooting. He testified that he recalled the date of August 14, 1990 as that was the date that his best friend Rufino Gestala was shot.[10] While he was on his way home from work, he stopped by the store of a certain Mr. Tiangko at the corner of Pecsonville, Barangay Tungkong, San Jose del Monte, Bulacan to talk to the victim about the job in Bahrain they were both applying for.[11] They had been conversing for about four (4) minutes when Rudy Mangahas arrived. Therafter, the accused bought three (3) bottles of beer and offered one each to him and the victim.[12] They had been drinking for only a short time when the accused suddenly approached Rufino Gestala, pulled out a gun and shot him.[13] After the shooting and upon seeing Gestala bloodied and clutching his chest, the witness ran away in the direction of his house and reported the matter to his uncle.[14]

On cross-examination, it was gathered that Rufino Gestala was his best friend, having known him for about six (6) years prior to his death.[15] *Ibid.*, p. 21.15 He also stated that he transferred his residence to Fort Bonifacio in the last week of October 1990 but prior to that, he, like witness Diosdado Padios, was staying in the house of Trinidad Balatbat, the aunt of the deceased. He admitted that he depended on Balatbat for his daily sustenance while he was staying with her and that he consulted with Trinidad Balatbat before giving his statement to the Office of the Public Prosecutor.[16]

On questions propounded by the trial court, the witness testified that at the time of the alleged shooting incident, he was at the left side of the victim while the accused was in front of the victim. He was the only one sitting on the sill of the store while the victim was leaning on it.[17] He likewise stated that the accused took only one step towards them as he was just in front of the victim and that the barrel of the gun was less than one foot away from the chest of the victim. He likewise recalled that at the time of the incident, he saw witness Diosdado Padios but the latter did not drink beer nor was he offered one as he was just passing by.[18]

The aunt of the victim, Trinidad Balatbat, was likewise presented and she testified mainly on the expenses their family incurred as a result of the death of the victim.[19]

For its part, the defense admitted that the accused shot the victim but alleged that the killing was done in self-defense. In support, counsel for the accused presented three witnesses, namely: the accused-appellant Rodrigo Mangahas, Nestor dela Rosa, and SP03 Mario Fernandez.

Accused-appellant narrated that on August 14, 1990 at past 1:00 p.m., he was on his way home from work to check up on his lunch.[20] When he was near the sari-sari store of Tiangco, he was called by Renato Panoso who was then talking with the victim Gestala.[21] Gestala was then sitting on the "pasimano" in front of

the store while Renato Panoso was standing on the other side.[22] When he approached them, Panoso got a gun from behind his waist, showed it to the accused and offered it to him saying, "Bilihin mo na lang ito, mahusay ito", to which the accused replied, "mahirap yan." [23] Gestala, who was standing about one (1) meter away from them suddenly raised his voice and said, "Putang-ina mo mahusay naman yong isinasanla namin sa iyo ba't ayaw mong tanggapin?" [24] In order to pacify them, he offered them bottles of beer. After they had consumed one-half of the bottles of beer, Gestala, who was then about two meters away from him, said, "Putang-ina mo ba't ayaw mong tanggapin yon ay mahusay naman." Immediately thereafter, Gestala pulled out a gun from the right side of his body, poked it at him and squeezed the trigger. The gun did not fire however. The accused then moved away from Gestala towards the "pasimano" of the store and bumped Panoso. He was able to take hold of the gun which was on the "pasimano" of the store and he fired the same at Gestala.[25]

The accused stressed that he fired only once at Gestala as he was only defending himself and that he threw away the gun which he used right after the incident.[26] After he fired at Gestala, the latter, still carrying his gun, ran away towards the back portion of the store. He himself ran away after the shooting incident as he was confused and afraid of the group of Gestala.[27] When he had calmed down, he went to the barangay hall of Barangay Tungkong Mangga to surrender himself and explain his side but nobody was there when he arrived. Upon returning to his house, he was told that the group of Panoso had been looking for him. Because of this threat on his life, he left the place and went to his in-laws at Sta. Maria, Bulacan.[28]

On cross-examination, he testified that he has known Renato Panoso for about a year and Rufino Gestala for about 3 years before the incident.[29] He characterized Rufino Gestala as an intimidating person and that his group is known in Pecsonville as notorious for taking drugs.[30] He further claimed that Gestala's source of income while he was still alive was selling marijuana and drugs.[31] The accused also testified having seen witness Diosdado Padios in the store on August 14, 1990 talking to Gestala but when the shooting incident occurred, Padios was about 3 or 4 meters away from the store.[32] He admitted that Padios's view of the shooting was unobstructed by any barrier.[33] When asked why it was Gestala who got angry with him when he refused to get the gun from Panoso, the accused said that Gestala and Panoso were associates in the business of selling guns.[34] He clarified that Gestala poked the gun at him only once, while he also shot at the victim only once while they were both standing up. He did not know that the victim was hit and had suffered three gunshot wounds.[35] Finally, it was found out that after the accused failed to find anyone in the barangay hall, he did not try to report the matter to the police authorities within San Juan del Monte nor did he do so when he was in the house of his in-laws.[36]

For his part, Nestor dela Rosa collaborated the accused's account of the incident. He testified that at about 1:00 p.m. on August 14, 1990 he was at the Quirino Highway, San Jose del Monte some 150 meters away from the place of his Comadre in Pecsonville.[37] He was walking towards his destination when he saw four persons in front of a store but one was about to leave.[38] Of the four, he was only able to recognize the accused as he had previously worked with him. As he continued walking; he saw one person whom he did not recognize holding a gun. He saw this person squeeze the trigger of the gun although it did not fire.[39] He then saw the accused pick up something from the counter of the store and then he heard a shot. He did not know what happened right after as he ran away from the scene out of fear.[40]

On cross-examination, he stated that the man on the right side of Mangahas did not do anything to pacify the man holding the gun.[41] He testified that he heard only one shot fired by accused-appellant[42] He admitted further that he did not report the incident to the police authorities in San Jose del Monte because he was not advised by anyone.[43]

Finally, the defense presented SP03 Mario Fernandez who testified on the procedures undertaken by his police

detachment in investigating the shooting of Rufino Gestala.[44]

On December 2, 1993, the Court *a quo* rendered the disputed judgment.

On January 26, 1994, accused-appellant, through counsel, filed a Motion for Reconsideration of the lower court's December 2, 1993 Decision where he urged the court to reconsider its ruling or if it should affirm its conclusion that self-defense was not duly proven, then he should be sentenced only for homicide, the qualifying circumstance of treachery not being present. After due hearing where accused-appellant testified anew on his behalf, the trial court denied the Motion for Reconsideration in an Order dated July 22, 1994.[45]

Hence, the present appeal where accused-appellant raises the sole assignment of error that the trial court erred in concluding that herein accused-appellant failed to prove any basic element of self-defense.

After a thorough review of the records of the case and a careful consideration of the arguments of accused-appellant, the Court does not find enough basis to reverse the judgment of conviction.

Accused-appellant's plea of self-defense once again brings the Court to the crucial question of credibility of witnesses and the weight that should be given to testimonial evidence. On this issue, the Court has almost invariably ruled that the matter of assigning value to the declaration of witnesses is best done by trial courts which, unlike appellate courts, can assess such testimony in the light of the demeanor, conduct and attitude of the witnesses at the trial stage and thus, unless cogent reasons are shown, the findings of the trial court are accorded great respect and credit.[46]

In discrediting the defense of accused-appellant that he shot the victim in self-defense, the trial court held:

"Accused's defense is devoid of merit. At first, accused put up the defense of alibi when the instant case was being investigated by the Office of the Provincial Prosecutor of Bulacan (Exhs. N, N-1, and N-2). Then, he sets up self-defense at the trial on the merits of the case. These two defenses are incompatible with each other. They do not at all provide shield to the accused to ward off the commission of the crime charged against him. Setting up such contradictory defenses will lead to the conclusion that the accused is confused of what defense is for real. This being so, accused's testimony is wanting of credence at the outset.

Finally, however, accused adopts self-defense saying that the victim pulled out a gun from his right side then poked it to the accused, squeezed its trigger once but misfired. Reacting to the situation, accused picked up the gun from the "pasimano" of the store, fired it once to the victim and then ran away from the scene of the incident. Analyzing the testimony of the accused, the inevitable conclusion would be that such testimony is unreasonable and improbable. If the victim really intended to kill the accused, it is natural for him, under the situation, to squeeze the trigger of his gun not only once if the first squeeze missed, but for several times until his gun fired or to pick up the gun on the "pasimano" of the store and use it instead in shooting the accused. It is inconceivable also that the victim would have to kill the accused just because the latter refused to buy or accept as pledge the gun Renato Panoso was offering to the accused. Incidentally, the alleged gun of the victim was not presented in Court. Likewise unbelievable is the claim of the accused that he picked up the gun from the "pasimano" of the store then shot the victim. At the moment of the incident, accused was facing the store and 1 meter, more or less, away from the victim who was sitting on the said "pasimano" indicating that that the victim was nearer to the gun on the "pasimano" than him. This being so, the victim should have picked up the gun from the "pasimano" ahead of the accused or should have grappled for the gun taken by the accused after his gun misfired at first squeeze of the trigger. This should have been the natural reaction of the victim when his life was placed in imminent danger after his gun misfired.

Moreover, it is strange why Renato Panoso a best friend of the victim and who was much nearer to the gun on the "pasimano" than the accused and the victim did not react to the situation when the life of his best friend was in imminent danger. It is likewise strange why Renato Panoso should place and leave the gun on the

"pasimano" and then continued drinking beer while the transaction on the gun has already been through.

Another doubt on the testimonies of the accused and his witness Nestor dela Rosa lies on their claims that the accused fired his gun only once. The victim sustained 3 gunshot wounds of separate and different entries and exits on his body. For a single shot to produce those wounds is highly irreconcilable. Further, the accused claimed as he demonstrated in open Court, that while he was standing he pointed his gun towards the victim at the level of his (accused's) chest. The accused and the victim were of the same height. If the accused fired his gun in the position demonstrated, the wounds would be through and through straight at the level of the chest from the point of entry to the point of exit. But, as it will be noted in Exh. B, the 2 gunshot wounds of the victim were through and through from his chest towards the lower exit at his back, indicating that the position of the accused was higher than that of the victim's when the fatal shots were fired. In other words, the alleged position of the accused is inconsistent with the location and direction of the wounds. It is rather consistent with the established facts that the accused was standing when he shot the victim who was then sitting and facing him. In the case of *People vs. Kok Tieck Hong*, G.R. Nos. 48535-36, Dec. 21, 1990, the Supreme Court held: 'As repeatedly expounded by this Court, evidence to be worthy of credit, must not only proceed from a credible source but must, in addition, be credible in itself. And by this is meant that it shall be natural, reasonable and probable as to make it easy to believe. No better test has yet been found to determine the value of the testimony of a witness than its conformity to the knowledge and common experience of mankind.'

By the same token, the corroborating testimony of defense witness Nestor dela Rosa likewise lacks credence. The fact that he could not identify or name the person who pointed a gun to the accused and squeezed its trigger once but misfired and other persons in the group, even as he has already discussed the incident with the accused, indicates that he was not an eye witness to the incident."

It is doctrinal that the assessment of the credibility of the witnesses is left largely to the trial court because of its opportunity, unavailable to the appellate court, to see witnesses on the stand and determine by their conduct and demeanor whether they are testifying truthfully or are simply lying. The determination of credibility is the domain of the trial court, and the matter of assigning values to the testimonies of the witnesses is best performed by it; thus the evaluation by the trial judge on the credibility of witnesses is well nigh conclusive on this Court.[47]

At the onset, the trial court was correct in pointing out the inconsistent defenses put up by the accused during the preliminary investigation and trial of the case. As noted by the prosecution, the accused, during the preliminary investigation of the case, executed a "Sinumpaang Salaysay"[48] dated October 18, 1990 wherein he alleged that at the time of the incident, he was with three other persons in Caloocan City and not at the scene of the shooting incident. At the trial of the case however, accused makes a complete turn-around and claims that he was at the scene of the crime but that he shot the victim only in self-defense.

Verily, these two defenses are incompatible with each other. As such, they do not at all provide shield to the accused to ward off the crime imputed against him. When a witness makes two statements, both being sworn to as a witness in one case, and these statements incur in the gravest contradiction, then the court cannot accept either the first or the second statements as proof. He himself by his own act of giving false testimony impeaches his own testimony and the court is compelled to exclude it from all consideration.[49]

Accused-appellant contradicts himself again in his testimony during the hearing on his Motion for Reconsideration of the December 2, 1993 Decision. In an apparent effort to address certain perceived discrepancies between his previous testimony and the evidence presented, accused-appellant, in the April 21, 1994 hearing on his motion for reconsideration, testified:

"Q: After that when Rufino received that gun from Renato Panoso what this Rufino Gestala did the gun?

A: He put the gun in the pasimano, sir.

Q: What happened next?

A: He started cursing, sir.

Q: Can you tell to this Hon. Court what these bad words or uttered those words?

A: He uttered the words, "Putang-Ina mo kaya nga kita pinatawag dahil nakasabit lang kami," sir.

Q: What was your answer?

A: I told them I'm sorry I cannot accede to their request because believe that is illegal and I'm afraid that my business will be affected, sir.

Q: What was the tune of the voice of Mr. Rufino when he uttered those words?

A:

He was cursing with a loud voice that is the reason why the vendors inside got afraid.

Q: When he uttered those words, what was the relative position of this Rufino Gestala?

A: He was standing, sir.

Q: When you answered that "baka masabit ako dahil illegal iyan," what did you do, if any?

A: Because he was already irritated and I'm also irritated, sir. I ordered two (2) bottles of beer and I gave to them, sir.

Q: Does this Rufino remained in standing when you offered the two (2) bottles of beer?

A: Yes, sir.

Q: After that what happened next if any?

A: I turned it my back.

Q: When you turned his back, what happened?

A: He cursed me, sir.

Q: What are the bad words he uttered?

A: He uttered these words "Putang-Ina Mo wala ka palang silbi kaya nga kita pinatawag dahil talagang

kailangang-kailangan ko ang pera," sir.

Q: What is the tune of his voice when he uttered these words?

A: Loud voice, sir.

Q: When you heard that, what did you do, if any?

A:

I faced them, sir.

Q: When you faced, what happened?

A: Rufino Gestala pulled his gun, sir.

Q: What did he do with his gun?

A: When I faced them he started shooting me but the gun did not fire me, sir he was holding the gun tightly, sir.

Q: So you want to impress this Hon. Court, Mr. Witness that when he first squeezed the trigger he tried again to squeeze the trigger?

A: Yes sir. He was squeezing the gun, sir. (Witness demonstrating his two hands).

Q: When he tried to squeeze the trigger of the gun, what did you do?

A: I saw the gun in the pasimano so I got it, sir.

Q: Now you said there is a Renato Panoso, can you tell what is the relative position with you this Renato Panoso when you grabbed gun at the pasimano?

A: Renato Panoso was in my right side the gun was in front of me that is why when I took the gun from the pasimano even if Renato Panoso, sir.

Q: You mean to say that this Renato Panoso never act or anything?

A: Both of us were trying to get possession of the gun, sir.

Q: Were you able to grab the possession of the gun which is in the pasimano, did you get the gun?

A: Yes, sir.

Q: What did you do with the gun?

A: After getting the gun I shot Rufino Gestala of course I have to shot because he is already shot me, sir.

Q: What was the real position of Rufino Gestala when you fired the gun when you grabbed the gun in the pasimano?

A: He was standing, sir.

Q: Still holding with that gun?

A: Yes, sir.

Q: Can you recall how many shots did you fire the gun?

A: Twice, sir.

Q: Can you tell the exact position of the arm when he holds the gun or when you fired the gun which you grabbed at the pasimano?

A: He was holding the gun with his two (2) hands as squeezing that trigger of the gun, sir."[50]

The discrepancies in his two testimonies are too glaring to overlook. In the trial proper of the case, accused-appellant testified that he fired his gun at the victim only once,[51] that the victim Rufino Gestala poked the gun at accused-appellant and squeezed the trigger only once,[52] and that Renato Panoso got the gun from the back of his waist and offered it to him for sale.[53] However, during his testimony in his motion for reconsideration, he contradicted himself by testifying that he fired at the victim twice; that the victim poked his gun at him and squeezed the trigger continuously when it did not fire; and that when Renato Panoso approached him to offer him the gun, he (Panoso) was already holding the gun. Verily, accused-appellant "corrected" his testimony to address certain points raised against him by the judge in his December 2, 1994 Decision. In doing so, however, accused-appellant raised further doubts on the truthfulness of his allegations.

Another factor which contributes further to the doubtfulness of the veracity of the testimony of the accused and his witness Nestor dela Rosa is their insistence that accused-appellant shot the victim only once. As stated by the medico-legal officer in his direct examination, the victim sustained three (3) gunshot wounds with three (3) different exit and entry points on different parts of the victim's body.[54] If, as accused-appellant insists, there was only one shot fired, it would be impossible for the single bullet to produce such wounds. Moreover, accused-appellant claims that he pointed his gun towards the victim at the level of his chest while the latter was standing. Considering that the accused and the victim were of the same height, the wounds suffered by the victim would have gone straight through and through from the point of entry on his chest up to the exit point on his back. But as noted by the medico-legal officer in his report,[55] the 2 gunshot wounds of the victim exited on the lower back of the victim, indicating that accused was in a higher position than the victim when he fired the fatal shots. Thus, the alleged position of the accused as stated in his testimony is inconsistent with the location and direction of the wounds suffered by the victim.

Likewise, the presence of several gunshot wounds on the body of the victim is physical evidence which

eloquently refutes accused-appellant's allegation of self-defense.[56] As previously stated, the medico-legal officer who conducted the post-mortem examination testified that the victim suffered three gunshot wounds, two of which were fatal. If the appellant merely intended to defend himself from the supposed aggression of the victim, he could have easily repelled that aggression with one or two shots on any non-vital part of the victim's body. Also, appellant could have run away from the victim at the time that the victim's gun supposedly misfired instead of shooting him 3 times. Thus, the location, number and gravity of the wounds of the victim belie appellant's pretension that he acted in self-defense.[57]

A final indication of appellant's guilt is his flight after shooting. His claim that he fled because of the threats allegedly made by the victim's friends and relatives is not sufficient reason for him not to surrender to the police since the latter could have adequately protected him if there were really threats to his life. Indeed, flight strongly indicates a guilty mind and betrays the existence of a guilty conscience.[58]

The next issue to settle is whether treachery can be appreciated to qualify the crime into murder. In finding the presence of treachery in the fatal shooting of Mangahas, the court a quo ruled that:

"Putting the foregoing facts together will clearly show that the prosecution has fully established the basic elements of the offense charged against herein accused. In other words, herein accused suddenly shot the victim to death while the latter was seated on the "pasimano" of the store drinking beer. The victim was entirely defenseless at all and not in a position to retaliate when he was shot. Such means employed by the accused constitutes treachery as it directly insured the execution of the offense without risk to himself arising from the defense which the victim might make."[59]

Under Article 14, paragraph 16 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make.[60] For treachery to be appreciated as a qualifying circumstance, two elements must concur: (1) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution is deliberately or consciously adopted.[61]

After a thorough perusal of the records of the case, we do not agree with the trial court's conclusion that treachery attended the shooting of the victim. No convincing evidence supports such a finding. The eyewitnesses' accounts were unclear in details, and we cannot fairly deduce that the means of execution of the crime used by accused-appellant were deliberately or consciously adopted or that the person attacked had no opportunity to defend himself or retaliate.

Witness Diosdado Padios, who, according to his testimony, was at a distance of one (1) meter away from the crime scene,[62] merely declared as follows:

Q:

When you saw Rufino Gestala and Rodrigo Mangahas on that particular date and time, do you recall having witnessed any unusual incident that happened?

A: None, sir.

Q: What were they doing at that time in the store?

A: They were drinking, sir.

Q: While drinking what happened next, if any?

A: Rodrigo Mangahas suddenly shoot him, sir.

Q: To whom did Rodrigo Mangahas shoot?

A: Rufino Gestala, sir.

Q: What happened to Rufino Gestala after he was shot?

A:

I don't know, sir I ran away.[63]

For his part, witness Renato Panoso, who was with the victim when the shooting incident occurred, testified, as follows:

Q: At the lapse of four minutes that you mentioned what happened if there is anything that happened?

A: Rudy Mangahas arrived, sir.

Q: When Mang Rudy Mangahas arrived did you notice if he has companion?

A: None, sir.

Q: When Mang Rudy Mangahas arrived what happened if there is anything that happened?

A: He bought three (3) bottles of beer and he even offered Rufino and I, sir.

Q: The beer that was offered to you were you able to consume it?

A: Yes, sir.

Q: While the three of you Rufino Gestala and Rudy Mangahas were drinking up to what time was this drinking went on?

A: For a short time, sir.

Q: You said that it is only for a short time what happened if there is anything that happened, Mr. Witness?

A: He approached Rufino, sir.

Q: And then at about how many distance was he when you said he approached Rufino Gestala?

A: He was near because I was beside Rufino, sir.

Q: After Rudy Mangahas approached near Rufino Gestala what did you see if there is anything that you see?

A: I saw him pulled out a gun, sir.

Q: Who pulled out a gun?

A: Mang Rudy Mangahas, sir.

Q: And then what happened after Mang Rudy Mangahas pulled out a gun if there is anything that happened?

A:

He immediately shot Rufino, sir.

Q: And did you see if Rufino Gestala was hit after he was shot by Rudy Mangahas?

A: I saw it, sir.

Q: After that what did you see happened to Rufino Gestala?

A: I saw him bloody holding his left chest, sir.

Q: You in particular what did you do after that?

A: I scampered, sir.[64]

Thus, from testimonies of the eyewitnesses, the only proof that the attack was treacherous is their bare testimonies that the accused-appellant suddenly shot the victim. However, there is no treachery where there is no evidence proving that the accused consciously and deliberately adopted his mode of attack to insure execution without risk to himself - mere suddenness of attack would not, by itself, constitute treachery.[65] In fact, the circumstances surrounding the case belie the trial court's finding that treachery was present. The shooting occurred in broad daylight. The victim was openly conversing with accused-appellant for several minutes before the incident. The victim himself was with his best friend who could have come to his aid at anytime. Verily, if accused-appellant wanted to insure that no risk would come to him, he could have chosen another time and place to shoot the victim.

The evidence then for the prosecution had established beyond reasonable doubt the guilt of the accused for the crime of homicide only, not murder. The penalty imposed for homicide in Article 249 of the Revised Penal Code is reclusion temporal.

Considering the absence of any aggravating or mitigating circumstances and applying in his favor the Indeterminate Sentence Law, we may thus sentence the accused to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal, as maximum, with all the accessory penalties prescribed by law.[66]

In conformity with prevailing jurisprudence, the trial court correctly awarded the amount of P50,000.00 as death indemnity to the heirs of the deceased.[67] With respect to the actual damages incurred by the relatives of the deceased, we have previously held:

"Of the expenses allegedly incurred, the Court can only give credence to those supported by receipt and which appear to have been genuinely incurred in connection with the death, wake, or burial of the victim. Thus, the Court cannot take account of receipts showing expenses incurred before the date of slaying of the victim; those incurred after a considerable lapse of time from the burial of the victim and which do not have any relation to the death, wake, or burial of the victim; those incurred for purely aesthetic or social purposes, such as the lining of the tomb of the victim..."[68]

Thus, from the evidence presented before the lower court, we affirm the award of P14,590.00 for funeral and burial expenses as these were properly supported by receipts[69] and proven during the trial of the case. However, we reduce the amount awarded as actual damages for food served during the burial of the victim to P7,285.00 which cover only those expenses incurred during the wake and vigil of the victim.[70] The other expenses relating to the 9[th] day, 40[th] day and 1st year death anniversaries are deleted as these were incurred after a considerable lapse of time from the burial of the victim.

WHEREFORE, the appealed decision of the Regional Trial Court is hereby MODIFIED, and the accused-appellant is found GUILTY OF HOMICIDE and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal, as maximum. Accused-appellant is further ordered to pay the heirs of the victim the death indemnity of P50,000.00; and actual damages of P21,875.00.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Per Judge Andres S. Maligaya, Rollo, 19-40.

[2] Rollo, pp. 4-5.

[3] TSN, April 24, 1991, p. 7.

[4] Ibid., p. 8.

[5] Ibid., p. 9.

[6] Ibid., pp. 18-19.

[7] Ibid., 19-20.

[8] TSN, June 25, 1991. pp.3-6.

[9] Ibid., p. 9.

[10] TSN, October 9, 1991, p. 5.

[11] Ibid., pp. 5-7.

[12] Ibid., pp. 7-8.

[13] Ibid., pp. 8-9.

[14] Ibid., pp. 9-10.

[15] Ibid., pp. 9-10.

[16] Ibid., pp. 23-25.

[17] Ibid., p. 31.

[18] Ibid., pp. 34-35.

[19] TSN, January 23, 1992.

[20] TSN, May 6, 1992, pp. 5-6.

[21] Ibid., pp. 6-7.

[22] Ibid., pp. 8-9

[23] Ibid., p. 13.

[24] Ibid., p. 14

[25] Ibid., pp. 14-16.

[26] Ibid., pp. 16-17.

[27] Ibid., pp. 17-18.

[28] Ibid., pp. 19-21.

[29] Ibid., pp. 22-23.

[30] Ibid., p. 25.

[31] Ibid., p. 27.

[32] Ibid., p. 30.

[33] Ibid., p. 41.

[34] Ibid., p. 33.

[35] Ibid., p. 43

[36] Ibid., p. 46

[37] TSN, June 25, 1992, p. 6.

[38] Ibid., pp. 6-7.

[39] Ibid., pp. 7-8.

[40] Ibid., pp. 8-9.

[41] TSN, July 8, 1992, p. 17.

[42] Ibid., p. 19.

[43] Ibid., p. 19.

[44] Ibid., p. 25.

[45] Records, pp. 285-289.

[46] People vs. Alas, 274 SCRA 310; People vs. Eubra, 274 SCRA 180; People vs. Bernal 274 SCRA 197; People vs. Vallador, 257 SCRA 515.

[47] People vs. Juma, 220 SCRA 440; People vs. Yumang, 222 SCRA 119; People vs. Kyamko, 222 SCRA 183; People vs. Aruta, 222 SCRA 201; People vs. Clapano, 227 SCRA 598.

[48] Exhibits "H", "H-1", and "H-2".

[49] Mondragon vs. Court of Appeals, 61 SCRA 511; citing United States vs. Pala, 19 Phil.190.

[50] TSN, April 21, 1994, pp. 5-10.

[51] TSN, May 6, 1992, pp. 43-44.

[52] Ibid.

[53] Ibid.

[54] TSN, April 24, 1991, p. 7.

[55] Exhibit "2".

[56] People vs. Amaro, 235 SCRA 8; People vs. Guarin, 259 SCRA 34.

[57] People vs. Nuestro, 240 SCRA 221.

[58] People vs. Gregorio, 255 SCRA 380; People vs. Lopez, 245 SCRA 95; People vs. Anciro, 228 SCRA 629; People vs. Martinado, 214 SCRA 712; People vs. Garcia, 209 SCRA 164.

[59] Rollo, p. 36.

[60] People vs. Santos, 270 SCRA 650.

[61] People vs. Silvestre, G.R. No. 127573, May 12, 1999; People vs. Tavas, G.R. No. 123969, February 11, 1999; and People vs. Dorado, G.R. No. 122248, February 11, 1999.

[62] TSN, April 24, 1991, p. 20.

[63] TSN, April 24, 1991, pp. 19-20.

[64] TSN, October 9, 1991, pp. 7-10.

[65] People vs. Magsombol, 252 SCRA 187.

[66] People vs. Albao, G.R. No. 117481, March 6, 1998.

[67] People vs. Espanola, 271 SCRA 689.

[68] People vs. Cordero, 263 SCRA 123; People vs. Degoma and Taborada, 209 SCRA 266.

[69] Exhibits "H", "H-1", "I", "I", and "J",

[70] Exhibits "G", to "G-4".

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