

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO VERMUDEZ Y YASAY, ACCUSED-APPELLANT.

G.R. No. 119464. January 28, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Accused-appellant seeks the reversal of the Decision[1] of the Regional Trial Court of Batac, Ilocos Norte, Branch 17, in Criminal Case No. 2278-17, dated June 18, 1992, declaring him guilty beyond reasonable doubt of the crime of murder.

In an Amended Information[2] dated November 11, 1985, appellant was charged with the crime of murder allegedly committed as follows:

“That on or about the 15th day of May, 1985 at about 4:40 o’clock in the afternoon, at Barangay Tartarabang, municipality (sic) of Pinili, province (sic) of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one AQUILINO ROSARO Y TIRA, with the use of a gun (38 Caliber, Smith and Wesson snub-nose, Serial No. 33559), inflicting on said AQUILINO ROSARO Y TIRA two (2) fatal gunshot wounds on the back that cause his instantaneous death.

CONTRARY TO LAW.”

During arraignment, appellant pleaded “Not Guilty.” After trial in due course, the court a quo rendered its assailed Decision convicting appellant of the crime of murder. The dispositive portion of which reads:

“WHEREFORE, the Court finds accused guilty beyond reasonable doubt of the crime of MURDER and hereby imposes to the accused the penalty of reclusion perpetua. To pay the heirs of the victim P50,000.00 by way of indemnity and costs.

SO ORDERED.”[3]

In view of the penalty imposed upon him, accused interposed this appeal before this Court.

The prosecution’s version of the facts of this case, as narrated by the Solicitor General, is as follows:

“On May 15, 1985, at around 4:30 o’clock in the afternoon, Pedro Tira, Imelda Tajon, Robert Bautista, Artemio Rosario, Aquilino Rosario (sic) and many others were at the racetrack at Bgy. Tartarabang, Pinili, Ilocos Norte watching a motorcross. Certain peace officers, Pat. Pagdilao, Pat. Baldomin and Pat. Tugaoen were standing beside Aquilino Rosario (sic).

Thereupon, appellant Virgilio Vermudez drew a gun, went near Aquilino Rosario (sic) and shot him twice at the back. After the shot, the victim sprawled on the ground. Artemio, the brother of the victim, together with several people took Aquilino Rosario (sic) to a Sarao jeep and brought him to Dr. Tactacan. However the victim was already dead.

Meanwhile, after appellant fired the shots, Pat. Pagdilao who was about less than a yard away, chased the latter and was able to overcome him within a distance of about seven meters. Accused was then subsequently brought to the police station at Pinili, Ilocos Norte.

Dr. Franklin Rambayon, Municipal Health Officer of Pinili, Ilocos Norte conducted a post-mortem examination on the cadaver of Aquilino Rosario and made the following findings:

‘Gunshot wound No. 1. Point of entrance - 1 cm. by 1 cm. In diameter located inferiorly in the highest point of the left scapula at the back about 2.5 in. And 2.8 in. from the spinal column. No point of exit. 2. Point of entrance - 1 cm. By 1 cm. In diameter located laterally and 2 inches from the highest point of the right scapula and about 5 inches from the spinal column. No point of exit.’”[4]

The trial court, which heard the case summarized the testimonies of the prosecution witnesses, viz:

“Witness, DR. FRANKLIN RAMBAYON, testified that he conducted the post-mortem examination of the deceased. x x x.

Evident from the foregoing, the victim suffered 2 gunshot wounds from the back with no point of exit, and as testified to by the doctor, the cause of death was due to profuse hemorrhage from the heart, left and right lung secondary to gunshot wound from the back.

Witness PEDRO TIRA, uncle of the victim, testified that on May 15, 1985 at around 4:30 P.M., he was at Brgy. Tartarabang, Pinili, Ilocos Norte, to witness a motocross. That while thereat, he saw both accused and victim in front of him and about six meters behind them. That he saw the accused drew a gun from his waist and went near the victim and shot him twice at the back. Immediately after the victim was shot, accused was confronted by a police officer who arrested accused. That he saw the victim fell to the ground lying prostrate, went near him and help brought the victim to a doctor but on the way the victim died. That witness was asked to identify the gun used by the accused and he identified a snubnosed .38 cal. revolver marked as Exh. “B” as the one used by the accused. He also identified his sworn statement taken at the police headquarters which was marked as Exh. “C”.

Witness ELPIDIO ROSARO, brother of the victim, testified that Pedro Tira, Imelda Tajon, Robert Bautista, Antonio Rosaro and others were then at Brgy. Tartarabang, Pinili, Ilocos Norte, to witness a motocross on May 15, 1985. That this witness drew a sketch (Exh. “B”) indicating the respective position of the accused, the victim and the two police officers, Pat. Baldomir and Pat. Pagdilao and his companions, indicated that he was six meters behind the victim and accused. That while thereat, he heard 3 gun reports but it was only on the 2nd and 3rd gun reports that he saw the accused just behind the victim and fired at him twice at the back and saw his brother fell and sprawled on the ground. That after the shooting incident, they helped the victim and brought him to a doctor on a sarao jeep but he died shortly thereafter. The witness identified a sworn statement (Exh. “C”) which he executed at the police headquarters dated five days after the incident.

IMELDA TAJON, sister-in-law of the victim, corroborating the testimony of eye witnesses, testified that at 4:00 P.M. on May 15, 1985, she was with others in Brgy. Tartarabang, to witness a motocross. While there, she saw the accused moving around trying to recognize the people around until he positioned himself 3 meters behind the victim. That not long after, she heard a gun report and saw the accused firing two more shots at the back of the victim. That immediately thereafter, Pat. Baldomir and Pat. Pagdilao who was beside the victim accosted the accused and arrested him. The witness together with others carried the fallen victim and brought him to the hospital but the victim died before reaching the hospital.

Pat. FREDDIE PAGDILAO testified that on May 15, 1985 at around 4:00 P.M., he was with Pat. Baldomir and Pat. Tugaoen at Brgy. Tartarabang, Pinili, Ilocos Norte, where a motocross is scheduled to take place. That he was standing on the right side of the accused with a person between them, while the accused was behind the victim. That the witness heard a gun report and when he looked back where the gun report came from, he saw accused with a gun aimed and pointed at the victim who was then about to fall to the ground. That he chased

accused Virgilio Vermudez, apprehended him and brought him to their headquarters for investigation. x x x”[5]

In contrast to the prosecution’s theory that accused deliberately shot the victim, appellant in his brief claims that the shooting was only accidental as he was defending himself from the victim’s aggression. The defense presented four witnesses, including accused himself.

“LEONIDO VERMUDEZ, brother of the accused, testified that on May 15, 1985, he was with friends at Brgy. Tartarabang, Pinili, Ilocos Norte to view a motocross. While there and being only two arms length away from his brother (accused), he saw the victim pulled a gun prompting his accused brother to wrestle the gun from the victim. That while the accused and victim were grappling for possession of the gun, the witness heard a gun report and that was the time he ran for safety. The witness testified that he never saw who fired the gun nor who was then in possession.

VIRGILIO VERMUDEZ, the accused herein, testified that he was at Brgy. Tartarabang, Pinili, Ilocos Norte on May 15, 1985, in the afternoon to witness a motocross. While there, he went near the victim to confront him if it is true that the victim had been telling people that he intends to kill the Vermudez clan as what he really did to his other brother. That it was on this occasion that the victim pulled a gun and the accused responding to the situation wrestled for the possession of the gun. Accused claims that he was able to twist the arm of the accused towards his back and the gun went off. That he heard two gun reports and when he stood up, he saw the victim sprawled on the ground and that was the time when he voluntarily surrendered to the police officer who brought him to the PNP headquarters for interrogation. On cross examination, the accused admitted the presence of Pat. Baldomir and Pat. Pagdilao as well as Pedro Tira (prosecution witness) at the scene of the crime.

The testimonies of Juan Edmalin and Daniel Manalili are merely corroborative. They attest that they were at the site of the motocross on May 15, 1985. While there, they saw both accused and victim grappling and wrestling for the possession of a gun until it went off. That they heard two gun reports and out of fear, they fled. x x x”[6]

In his brief, Appellant Virgilio Vermudez raises the following errors:

1. THAT THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.
2. THAT THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN ORDERING ACCUSED TO PAY THE HEIRS OF THE VICTIM P50,000.00 BY WAY OF INDEMNITY AND COSTS.

Accused-appellant faults the court for convicting him of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt. This submission is not only too generalized an averment but also too hackneyed as to be devoid of merit. Perusal of the records indicates that accused-appellant has failed to overcome the prosecution’s evidence establishing his guilt beyond reasonable doubt, and that the killing of the victim, Aquilino Rosario, was attended by the qualifying circumstance of treachery, moreover, appellant was positively identified by prosecution witnesses.

Article 248 of the Revised Penal Code, provides:

“ART. 248. Murder - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity; . . .”

As established by the trial court, the prosecution's evidence meets the requisites for appreciating *alevosia* (treachery) in the commission of the crime, viz.: 1) at the time of the attack, the victim was not in a position to defend himself; and 2) appellant consciously and deliberately adopted the particular means, method or form of attack employed by him to ensure its success.[7] The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby, ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim.[8]

As pervasively portrayed by the prosecution, accused-appellant positioned himself at the back of the victim, pulled out his gun and without any warning, shot the victim twice at his back, thereby, causing his instant death, a fact that is sustained by reliable eyewitnesses' account.[9] A perusal of the testimonies of the prosecution's witnesses indicates that the suddenness and mode of attack adopted by appellant, placed the victim in a position where it would be impossible for him to foresee any impending harm to resist the attack or defend himself.

With regards to accused-appellant's assertion that he was merely acting in self-defense, such argument hardly impresses no one. It is settled, that in cases where the accused pleads self-defense, the burden of proof shifts to him; he has to prove by clear and convincing evidence, the elements of his plea, viz.: 1) unlawful aggression; 2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and 3) lack of sufficient provocation on the part of the person defending himself, before he can avail of the benefits of said justifying circumstances.[10] Accused failed to adduce sufficient, satisfactory, and convincing evidence that would show there was unlawful aggression on the part of the victim. Thus accused did not overcome the evidence of the prosecution, which clearly established the fact that accused-appellant shot the victim from behind without any provocation at all.

The nature and extent of the injuries inflicted upon the deceased and the circumstances of the attack also negate accused-appellant's claim. The victim sustained two gunshot wounds at his back. Hence, if they were really grappling for the possession of the gun, then the wounds should have been inflicted on the frontal part of the body of the victim, and not at his back; that the commotion would have called the attention not only of the police officers besides them, but more of the people surrounding them; and that a single shot would have sufficed to stop anyone of them from grappling with the other for possession of the gun. Furthermore, accused-appellant's alleged position is contradicted by the testimony of his brother, Leonido Vermudez, who stated he did not intervene nor help his brother, despite being only two arms length away at the time victim and the accused at the time they were allegedly grappling for the possession of the gun. The trial court likewise noted that it is highly improbable and unnatural for one brother, who has a chance to extend assistance, to abandon another brother who is in grave danger. The presence of several gunshot wounds on the body of the deceased is a physical evidence which eloquently refutes said defense.[11] To quote the observation of the trial court:

"If the victim had possession of the gun and the accused merely grappled and twisted the arm of the victim towards his back, accidental firing of two successive shots is improbable to happen. Experience as well as natural course of things may give way to a single accidental shot but not to two shots under the circumstances narrated by the accused." [12]

We are now constrained to conclude that there was no reversible error nor grave abuse of discretion on the part of the court when it found appellant guilty of the crime charged. This is true even if the trial judge appears to have relied substantially on the testimonies of the victim's relatives, among other witnesses. He had no reason to cast doubt on the credibility and veracity of the testimony of said relatives, who were presented by the prosecution as witnesses. Their statements are not tainted with any contradiction, inconsistency or prevarication. Incidentally, they were corroborated by Pat. Pagdilao, one of the police officers who appeared for the prosecution as witness

and whose presence at the scene of the crime was admitted by both the defense and the prosecution. Between the self-serving denial of the accused and the positive testimony by the witnesses, the latter deserves greater credence.[13] The degree of closeness or familiarity with the accused on the part of the witnesses, although helpful, is by no means an indispensable requirement for the purpose of assailant's positive identification.[14] Likewise, the relationship of a witness to the victim, far from rendering his testimony biased, would even render it more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[15] Appellant has not adduced any evidence to show that the witnesses for the prosecution had ulterior motives in testifying falsely against him or mendaciously implicating him, if indeed he was not involved in the killing.

The award of P 50,000.00 to the heirs of the victim by way of indemnity as a result of the death of the victim is consistent with jurisprudence.[16] Thus, accused-appellant's averment that the trial court erred in ordering him to pay said amount to the heirs of the deceased is without merit.

WHEREFORE, the decision of the Regional Trial Court of Batac, Ilocos Norte, Branch 17 in Criminal Case No. 2278-17, finding accused-appellant guilty beyond reasonable doubt of the crime of MURDER is hereby AFFIRMED.

Cost against accused-appellant.

SO ORDERED.

Bellosillo, (Chairman), Puno, Mendoza and Buena, JJ., concur.

[1] Rollo, pp. 24 - 28.

[2] Ibid, p. 14.

[3] Rollo, p. 28.

[4] Rollo, pp. 72-74.

[5] Decision, pp. 13; Rollo, pp. 24-26.

[6] Decision, p. 3; Rollo, p. 26.

[7] Article 14 (16), Revised Penal Code.

[8] People v. Caritativo, 256 SCRA 1 (1996); People v. De Castro, 252 SCRA 341, 343 (1996); People v. Abrenica, 252 SCRA 54, 56 (1996); People v. Ponayo, 235 SCRA 226 (1994); People v. Balanon, 233 SCRA 679 (1994).

[9] Rollo, p.51.

[10] People v. Viernes, 262 SCRA 641 (1996); People v. Gregorio, 255 SCRA 380 (1996); People v. Lualhati, 234 SCRA 325 (1994).

[11] People v. Babor, 262 SCRA 359 (1996); People v. Guarin 259 SCRA 34 (1996).

[12] Rollo, p.27.

[13] People v. De Castro, 252 SCRA 341 (1996); People v. Lamsing, 248 SCRA 471 (1995); People v. Aurella, 231 SCRA 394 (1994).

[14] *People v. Bracamonte*, 257 SCRA 380 (1996).

[15] *People v. Castillo*, 261 SCRA 493, 495 (1996); *People v. Viente*, 225 SCRA 361 (1993); *People v. Tinampay*, 207 SCRA 425 (1992).

[16] *People v. Trilles*, 254 SCRA 633 (1996); *Sulpicio Lines, Inc. v. CA*, 246 SCRA 376 (1995); *People v. Flores*, 237 SCRA 653 (1994);
, 202 SCRA 655 (1991).

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