

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES CAISIP, ACCUSED-APPELLANT.

G.R. No. 119757. May 21, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellant Andres Caisip was charged with murder in an Information that reads:

"That on or about the 20th day of February, 1991, at Barangay Nangabulan, Talugtug, Province of Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a member of the PNP, Cuyapo, Nueva Ecija, with intent to kill, treachery and evident premeditation, taking advantage of nighttime, and while inside the dwelling place of one ROGER PICAÑA, did then and there, wilfully, unlawfully and feloniously and criminally shoot ROGER PICAÑA who was then sleeping, with the use of a long firearm, thereby hitting the latter on his head which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW."[1]

During arraignment, accused-appellant pleaded "not guilty." After trial on the merits, the lower court convicted accused-appellant of murder and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00.[2] Cesar Picaña, a brother of the deceased, was presented by the prosecution as one of its witnesses. He testified that on the night of the incident, he was at the house of his brother, the deceased Roger Picaña, in Bgy. Nangabulan, Talugtug, Nueva Ecija. He was roused from his sleep when he heard a scratching sound at the back of the house near the kitchen. He saw accused-appellant holding a long firearm. A few moments later Genoveva Padlang Picaña, his sister-in-law and wife of the deceased, went out of the house and conversed with accused-appellant.

From his position, Cesar Picaña heard accused-appellant urging Genoveva Padlang Picaña to live with him. Genoveva's refusal so irked accused-appellant that he threatened to kill her husband to which Genoveva simply replied "If you want, just kill him." Accused-appellant then calmly walked towards the sleeping Roger Picaña and shot him three times.

Cesar Picaña informed Miguel Patacsil, their grandfather, of the incident. On his part, Miguel Patacsil testified that immediately after learning of the incident, he went to the house of the deceased. He averred that the deceased's wife, Genoveva, admitted to him that it was Andres Caisip who killed her husband.

Police Officer William Esperon testified that when they conducted the investigation, they found the victim to have sustained three (3) gunshot wounds on his head. The policemen recovered empty shells of an armalite rifle near the body of the victim. Further, the wife of the deceased admitted to the witness that before the killing, she conversed for about two (2) minutes with the assailant who insisted that she live with him.

Wilfredo Picaña, another brother of the deceased, testified that on February 9, 1991 the deceased had an altercation with accused-appellant about the latter's involvement with the wife of the former. Another altercation on the same subject matter happened again on February 17, 1991. In addition, the witness testified that at one time, the wife of his deceased brother and accused-appellant maintained an illicit relationship.

SPO3 Jessie Nery Mosada served the warrant of arrest to accused-appellant on September 23, 1993 in San Carlos City, Pangasinan. At the time of his arrest, accused-appellant was living with the wife of the deceased.

The defense presented a different version. The first defense witness, SPO2 Danny Mendoza, testified that on the night of the incident accused-appellant was at Cuyapo, Nueva Ecija and not at Talugtug, Nueva Ecija. SPO4 Rogelio Bongolan and Col. Onofre Guloy corroborated the above testimony.

Accused-appellant personally asked Giger Picaña, son of the deceased to testify on his behalf. Giger Picaña basically testified that nobody recognized the assailant of his father as they were all sleeping when his father was gunned down.

Accused-appellant anchored his defense on alibi and denial. He denied having maintained any relationship with the wife of the deceased and having lived with her. Likewise, he denied having had any quarrel with the deceased. He claimed to have learned of Roger Picaña's demise three days after the killing. He alleged that when the killing happened, he was at Cuyapo Police Station as member of the alert team.

The prosecution presented Andres Pascasio as rebuttal witness. Pascasio testified that on the night of the incident, he was at his uncle's house, a mere five meters from the residence of the deceased. He was roused from his sleep because of the barking of the dogs outside their yard. When he was about to go out to investigate, he saw accused-appellant enter the house of the Picañas holding a long firearm. Subsequently, he heard three gunshots and after a while, accused-appellant was seen leaving the house. Ten minutes later, he heard a motorcycle being started.

Ernesto Cabute, another rebuttal witness for the prosecution, testified that accused-appellant actually had an altercation with the deceased. The incident happened inside his house during their town fiesta wherein the deceased approached accused-appellant and called him a "wife grabber." In turn, accused-appellant discharged his firearm pointing upwards. The two were later pacified by cooler heads.

After a thorough and careful examination of the records, this Court is convinced beyond reasonable doubt that accused-appellant is, indeed, guilty as charged. Accused-appellant was positively identified as the assailant, not only by the deceased's brother but also by rebuttal witness Andres Pascasio.

Accused-appellant's denial crumbled in view of this positive identification. This Court has held in a long line of cases that denial is a weak defense and it cannot prevail against a positive identification. .

Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.[3] They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[4]

Likewise, this Court is not persuaded by accused-appellant's alibi. He claims that he was at the Cuyapo Police Station when the incident occurred. Nevertheless, he failed to satisfy the twin requirements in order for alibi to be plausible. First, accused-appellant must prove that he was nowhere in the vicinity of the crime at the time of its

commission; he must prove that he was somewhere else instead. Second, he must prove that it was highly impossible for him to be present at the crime scene at the time of its occurrence.

Accused-appellant attempted to prove that he was not at Bgy. Nangabulan, Talugtug, Nueva Ecija during the killing of the deceased. This attempt however proved futile considering his positive identification as the malefactor by two of the prosecution witnesses.

Moreover, the corroborative testimony of SPO2 Danny Mendoza that accused-appellant was at the Cuyapo Police Station as a member of the alert team at the time when the killing occurred had been discredited. SPO2 Mendoza claimed that at around 7:30 on the night of the incident, accused-appellant was having a drinking spree with the Cuyapo Station Commander.[5] This was, however, denied by Col. Onofre Guloy who testified that SPO2 Mendoza was lying as there was no drinking spree that night.[6]

Likewise, SPO2 Mendoza, together with SPO4 Rogelio Bongolan, testified that the Talugtug Police Station Commander personally came to the Cuyapo Police Station to verify the presence of accused-appellant. Col. Guloy, however, could not recall whether the Talugtug Police Station Commander personally came to the Cuyapo Police Station.[7]

Furthermore, Col. Guloy asserted that accused-appellant was at the Cuyapo Police Station in the evening of February 20, 1994 up to the early morning of February 21, 1994 “based on what he could remember”. [8] It would have been more expedient and credible if a log book or attendance sheet had been presented to lend credence to the above assertion. Nevertheless, he admitted that there was a possibility that accused-appellant may have left the Cuyapo Police Station without his knowledge.[9] Taken in its entirety, the inconsistent and doubtful testimonies of the defense witnesses could hardly prove the presence of accused-appellant at the Cuyapo Police Station at the time of the killing.

Granting, without admitting, that he was nowhere in the locus criminis at the time of the killing but was indeed at Cuyapo Police Station, this allegation still falls short of satisfying the second requirement. Accused-appellant failed to show by any iota of evidence that it was highly impossible for him to be present at the crime scene at the time of its commission.

Cuyapo Police Station is situated approximately 22 kilometers away from Talugtug, Nueva Ecija. This distance could be traversed in forty five minutes by passing through a certain place called Baloy using a motorized vehicle.[10] In the instant case, prosecution witness Andres Pascasio categorically testified that he heard the sound of a motorcycle being started after accused-appellant left the house of his victim.[11]

This Court cannot understand why accused-appellant was bent on asking the deceased's mother-in-law to testify for him as the latter did not even witness the killing. It was the wife of the deceased who was present and who, according to prosecution witnesses, even admitted that she had a conversation with the assailant of her husband shortly before the latter was killed. In fact, she executed two affidavits dated March 6, 1991[12] and March 12, 1991,[13] respectively, pointing to accused-appellant as the killer of her husband and attesting to the circumstances surrounding the killing.

The fact that the wife of the deceased desisted from pursuing the case three weeks after pointing to accused-appellant as the culprit is nothing, if not suspicious. Accused-appellant's illicit relationship with the wife of the deceased was a plausible motive why he wanted Roger Picaña dead. The records of the case overwhelmingly support and establish this fact. The wife's execution of the affidavit of desistance dated April 5, 1991[14] would seem to give credence to her alleged illicit relationship with accused-appellant for it is unnatural for the wife not to doggedly prosecute and bring to justice the killer of her husband.

According to his testimony, accused-appellant knew the wife of the deceased and they were even on good terms with each other prior to the death of her husband. If accused-appellant were indeed innocent as insisted by him, he should have persuaded the wife of the deceased to testify in his behalf because understandably, a relative, in seeking justice for his kin, will prosecute those who are really guilty and not allow the true assailant to go scot-free.[15]

Nonetheless, the court a quo erred in appreciating nighttime as an aggravating circumstance. In order for nighttime to be properly so considered, it must be shown that it was deliberately and intentionally sought by accused-appellant to help him realize his evil intentions. The records did not reflect any indication of such intention, hence, it should not be considered in assaying the gravity of the killing. In *People v. Ferrer*[16] this Court held

“However, the trial court improperly considered nocturnity as a separate aggravating circumstance. While it correctly stated that nighttime must be deliberately sought in the perpetration of the crime, a close examination of the records shows no factual support that the appellants indeed deliberately considered the cover of darkness as an indispensable factor in assaulting Agtang. The prosecution established no more than the simple fact that the crime was committed at night.”

On the other hand, the trial court correctly appreciated dwelling as having aggravated the crime. It was clearly established that Roger Picaña was killed inside his house. When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance.[17]

As regards the qualifying circumstance of evident premeditation, the same is wanting in the present case. Evident premeditation suggests the deliberate hatching of a plan to execute a crime. To be considered as a qualifying circumstance, the prosecution must prove: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[18] The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.[19]

In the instant case, there was no proof that when accused-appellant went to the victim’s house, he already had plans to kill the deceased. On the contrary, a perusal of the records would show that accused-appellant originally intended to convince the wife of the victim to elope with him. He only killed the victim upon provocation of his paramour. There was no proof of the time when the intent to commit the crime was engendered in the mind of accused-appellant, the motive and all those facts and antecedents which when combined would show that the crime was knowingly premeditated or that accused-appellant acted not only with a pre-existing design, but with that cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose.[20]

We agree, however, with the trial court that treachery attended the killing. There is treachery when the offender commits any of the crimes against persons, 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.[21] To constitute treachery, therefore, two conditions must be present, to wit: (1) the

employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[22]

While accused-appellant was merely provoked by his paramour in killing the deceased, nevertheless, the fact remains that when accused-appellant shot the unsuspecting victim, the latter was then asleep and was in no position to defend himself. It has been repeatedly held by this Court that there exists the qualifying circumstance of alevosia or treachery when one takes the life of a person who is asleep.[23] In the early case of *US v. Rubeta*[24] we held,

"This circumstance constitutes alevosia because the aggressor, availing himself of the condition in which he found his victim evidently employed means for the commission of the crime which directly and specially tended to insure its consummation without any risk to himself for as the latter was asleep, it is unquestionable that Rubeta acted with the assurance of success in the realization of his criminal purpose."

Accused-appellant, in the case at bar, availed of the condition in which he found his victim. He knew that the victim was fast asleep and had no way of defending himself, deliberately employing means for commission of the crime which directly and specially tended to insure its consummation without any risk to himself. He calmly walked over to the deceased and shot him at close range in the head with a firearm which was later identified as an M-16 rifle, let loose a burst of three shots, each shot sufficient to cause the instantaneous death of the victim. Clearly, accused-appellant, by shooting the deceased in the head at close range while the latter was sleeping, consciously adopted a mode of attack intended to facilitate the commission of the crime without risk to himself since under the circumstances, it would have been impossible for the offended party to retaliate, much less defend himself.

Since the killing is attended by alevosia, the crime committed is murder which has the penalty of reclusion temporal to death. In view of the aggravating circumstance of dwelling, the proper penalty would have been death. However, since the crime occurred on February 20, 1991 when the death penalty was suspended, the penalty is reduced to reclusion perpetua.

WHEREFORE, the decision of the Regional Trial Court of Guimba, Nueva Ecija, Branch 32 in Crim. Case No. 685-G finding accused-appellant guilty of MURDER and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P50,000 is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J. (Chairman), and Kapunan, JJ., concur. Purisima, J., on leave.

[1] Rollo, p. 2.

[2] Decision penned by Presiding Judge Pablo D. Atienza.

[3] *People v. Ondalok and Mahinay*, G.R. No. 95682-83, May 27, 1997.

[4] *People v. Castillo*, G.R. No. 116748, June 2, 1997.

[5] TSN, May 18, 1994, p. 3.

[6] TSN, June 21, 1994, pp. 7 & 10.

[7] *Supra*, p. 5.

[8] TSN, June 21, 1994, p. 13.

[9] TSN, June 21, 1994, p. 12.

[10] TSN, May 18, 1994, p. 8.

[11] TSN, July 19, 1994, p. 19.

[12] Records, p. 26.

[13] Records, p. 29.

[14] Annex "A", Records, p. 12.

[15] *People v. Asto*, G.R. No. 108611, August 20, 1997.

[16] 255 SCRA 21 (1996).

[17] *People v. Feliciano*, 256 SCRA 716 [1996]

[18] *People v. Bautista*, G.R. No. 111149, September 5, 1997.

[19] *People v. Palomar*, G.R. No. 108183-85, August 21, 1997.

[20] *People v. Bautista*, 254 SCRA 622 [1996].

[21] *People v. Tamparong*, 249 SCRA 584[1995]; *People v. De Leon*, 248 SCRA 609 [1995]; *People v. De la Cruz*, 242 SCRA 558 ; *People v. Camahalan*, 242 SCRA 609 [1995].

[22] *People v. Belga*, 258 SCRA 583 1996]; *People v. Ledesma*, 250 SCRA 166[1995] *People v. Silvestre* 244 SCRA 479 [1995].

[23] *People v. Caringal*, 176 SCRA 404 [1989]; *People v. Nolasco*, 163 SCRA 223 [1988]; *People v. Trinidad*, 162 SCRA 714 [1988]; *People v. Andres*, 155 SCRA 686 [1988]; *People v. Perante*, 143 SCRA 56 [1986]; *People v. Miranda*, 90 Phil 91 [1951]; *People v. Dequina* 60 Phil 279 [1934].

[24] *US v. Rubeta*, 1 Phil 331 [1902].

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