

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADONIS BALAD, ACCUSED-APPELLANT.

G.R. No. 121793. June 30, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

On October 26, 1992, Wenceslao Doctolero, a passenger in a jeep parked at Kayang Street, Baguio City, was shot at the nape resulting in his instantaneous death. On November 12, 1992, an information for murder, alleged to have been committed with treachery and evident premeditation, was filed and docketed as Criminal Case No. 10719-R in the Regional Trial Court, Branch 4, at Baguio City, against accused-appellant Adonis Balad, a police officer.[1]

On May 19, 1995, the trial court rendered judgment finding herein appellant guilty of the crime charged, for which he was meted the penalty of reclusion perpetua and ordered to pay the heirs of the victim the sum of P50,000.00 as death indemnity; P35,000.00 as reimbursement of expenses for his coffin and funeral wake for nine days; P265,761.00 for loss of his expected earnings for three years; P50,000.00 for moral damages; and P25,000.00 as exemplary damages, with costs.[2]

Appellant interposed the present appeal, alleging inter alia by way of assignment of errors that the court a quo was mistaken in basing its findings on (1) conflicting facts presented by the prosecution, one consistent with appellant's innocence and the other indicative of his guilt; (2) misapprehension of facts by relying heavily on the prosecution's evidence against appellant despite glaring substantial defects; and (3) prosecution evidence of guilt which was contrived.[3] At bottom, the matter of the identification of appellant as the assailant is the pervading issue.

The prosecution's version of the facts of the case is anchored on the testimony of one of the principal eyewitnesses, Edwin Sabalburo. Considering its paramount role in the case for the People, as shown by the determined onslaught against it by the defense, we will quote the pertinent significant portions thereof somewhat at length:

Q. On the afternoon of October 26, 1992, do you remember where you were and where you went?

A. Yes, sir.

Q. Where did you go and where were you?

A. I was then at Kayang Street, Baguio City.

Q. Where did you come from before you went to Kayang Street?

A. We came from Burnham Park that afternoon.

Q. You said 'we' who were your companions?

A. Charlie Lim and Jerry Marcelo.

Q. Why did you go to Kayang Street from Burnham Park that afternoon?

A. We were about to go home.

Q. About what time was it?

A. 4:30 sir.

Q. In the morning or afternoon?

A. In the afternoon sir.

Q. When you were at Kayang Street bound for home at Dominican Hill, did you notice anything unusual that happened that afternoon?

A. There was sir.

Q. Will you tell this Honorable Court what is that unusual incident that happened?

A. There was a gunshot.

Q. How many gunshots did you hear?

A. There were two (2).

Q. Did you notice where the first gunshot came from?

A. No, sir.

Q. Now, you said there were two (2) gunshots. After that first gunshot, how many seconds or minutes lapsed before you heard the second gunshot?

A. More or less five (5) minutes.

Q. And what did you do when you heard that second gunshot?

A. I hid myself but just the same I saw what happened.

Q. You hid yourself with what?

A. Near the vehicle.

Q. You said you hid yourself, but you saw something that happened. What did you see that happened?

A. I saw somebody shot, sir.

Q. And where was that somebody who was shot that you saw.

A. There at the parking place bound for Fairview.

Q. Where was he at the time that you saw him shot?

A. He was inside the vehicle.

Q. What kind of a vehicle?

A. Jeep bound for Fairview.

Q. Was that jeep bound for Fairview where the person shot was, moving or parked?

A. It was parked.

Q. And when you saw that person who was shot at sitting in the jeep parked, did you see who shot him?

A. Yes, sir.

Q. And did you recognize that person who fired a shot?

A. Yes, sir.

Q. If he is in this court room now, will you please point at him, the one who fired a shot?

A. (Interpreter: Witness now points to a man seated in the courtroom with green jacket, who, when asked, stood up and gave his name as Adonis Balad, the accused in this case.)

Q. How do you know that this person you have just pointed at in the courtroom was the one whom you saw

fire a gun at the man inside the jeep?

A. He was the one holding the gun.

Q. And do you know if the person who was seated in the jeep was hit with the shot?

A. Yes, sir.

Q. And did you notice what part of the body of that person in the jeep was hit with the shot?

A. Here, sir.

(Interpreter: Witness pointing to the left side of his neck below his left ear.)

Q. And where was this person you had just identified before this Honorable Court situated or where was he when he fired a shot, when you say he fired a shot in relation to the person who was shot?

A. At his back.

Q. Let us make this straight. The man who shot was at the back of whom?

COURT: He was at the back of the victim?

Q. Back of whom?

A. At the back of the one who was shot.

Q. Can you show to this Honorable Court, in the courtroom, the distance, if you can estimate, your distance to the place where Mr. Doctolero was shot?

A. (Interpreter: Witness estimating a distance of about 7 to 8 meters.)

Q. At the distance you have just indicated before this Honorable Court, should you have seen clearly the face of the person who fired a gun at Engineer Doctolero?

A. Yes, sir.

Q. Was there anything that could have hidden the person whom you saw fired a shot at Engineer Doctolero where you were with your companions?

A. None, sir.

Q. And what did Mr. Balad whom you have just identified before this Honorable Court do after he fired the shot at Engineer Doctolero?

A. He walked casually as if nothing happened.

Q. Was Mr. Balad outside or inside the jeep when he fired a shot?

A. He was outside.

Q. And how far away was Mr. Balad at that time when he fired a shot at Engineer Doctolero?

A. Very near, sir, because he pointed his gun at the nape, point blank.

Q. And you said that Mr. Balad after firing the shot, just walked casually as if nothing happened. Where did he go?

A. He went down Abanao Street.[4]

This eyewitness was firm and categorical in his testimony during the cross-examination and remained unshaken and consistent in his answers, thus:

Q. And from where you were, you clearly saw Balad holding a gun?

A. Yes, sir.

Q. And Balad was at the back of the jeepney on the right side?

A. Yes, sir.

Q. Now, from where you said earlier that there was no obstruction. You saw Balad holding a firearm and shot the victim?

A. Yes, sir.

Q. Let us be clear on this, Mr. Witness, from where you were standing to where Balad was, was he on the higher plain or a lower plain or immediately parallel to you?

A. He was right opposite me, directly in front of me.”[5]

Edwin Sabalburo further testified that appellant was wearing a camouflage jacket and that the firearm he used was a short gun. The witness ramified that after appellant shot Doctolero, the victim fell down on the floor of the jeepney while appellant on his part, casually walked away towards Abanao Street.[6]

The testimony of this principal prosecution witness was corroborated by one of his companions, Charlie Lim, who testified[7] that in the afternoon of October 26, 1992, he was with Edwin Sabalburo at the jeepney station on Kayang Street while waiting for a jeepney bound for Dominican Hill in Baguio City. Suddenly, he noticed people scampering away and then he heard two gunshots. He was not aware where the first gunshot came from but he saw where and when the second shot was fired.

He declared that he heard the first gunshot at around 4:25 in the afternoon and the second gunshot at around 4:30, or after an interval of about five minutes. He affirmed that the second gunshot was fired towards the jeepney station for Fairview, Baguio City, just opposite the place where he was standing at Kayang Street. His initial reaction after hearing the first shot was to hide behind a parked jeepney, but his attention was directed to the place where and when the second shot was fired. It was then that he saw a person holding a gun and shooting someone inside the parked jeep bound for Fairview.

He further stated that he was just about seven strides away from the spot where the person holding the gun shot the passenger of the jeepney who, at that time, had his back turned away from the gunman. When he was asked in open court if he could identify the gunman, he stepped down and touched the left shoulder of appellant Adonis Balad.[8]

The prosecution also presented Dr. Emmanuel Fernandez, medico-legal officer of the Baguio Health Department, who examined the body of the victim, and this doctor explained that the point of entry was at the nape, or back of the skull; he traced the trajectory of the bullet in relation to the basal skull fractures and cranial vaults which it damaged; and explained that the death of the victim was instantaneous since the brain stem and the medulla oblongata were penetrated.[9]

The defense of appellant is founded upon alibi, but so replete with details that we have decided to likewise quote the significant portions from the painstaking summary thereof by the trial court, under the same token that we did so with the testimony of the principal witness for the prosecution, so that appellant’s submissions may equally be ventilated and assayed.

“According to the evidence of the defense, the accused, a Baguio City policeman since September 15, 1987 was, on October 26, 1992 and thereabouts assigned in Sub-station No. 6 of the Baguio City Police, at Aurora Hill, Baguio City. His tour of duty on October 26, 1992 was from 8 o’clock in the morning to 4 o’clock in the afternoon. He did not however report for duty that day because he asked permission from his commanding officer so he could secure the necessary papers to support his application to take the Board Examination in Criminology which was then forthcoming.

At 9 o’clock in the morning that day, while he was going to the City Hall of Baguio, on his way to get the necessary clearances thereat, he met Joepet Sawilan, a friend in high school days. The accused asked Sawilan to

wait for him so they would go together after he (the accused) could have secured these clearances. When the accused had secured the needed court clearance from the City Hall at 9:30 o'clock that morning he and Sawilan went to Kayang Street as accused wanted to look for a friend at First Kayang Street. While the accused and Sawilan were standing in front of the 5-Star Fast Food and Restaurant located at the groundfloor of Albger Building, the accused noticed that there were people going up and down its stairs. He went up the stairs and Sawilan followed him, five (5) meters behind.

While on the stairs going up, a person blocked him. The accused asked this person why he was blocking him and the latter did not answer. The accused introduced himself as a policeman, but the person instead persisted in blocking him from the stairway and tried to draw something from his waistline and then closed the door. This prompted the accused to draw his gun and upon drawing it he uncocked (sic) it. In the process, it accidentally fired. He then returned the gun to his waistline.

He waited thereat for any information as to whether someone was hit, but found out that no one was hit. At this point Policeman Jose Alsisto arrived at the place and asked the accused about the gunshot. After informing Alsisto no one was hit, Alsisto allegedly told the accused, 'Okey. You can leave.' So the accused went down the building and proceeded to where Sawilan was at the lower section of Albger Building and together they went to William's Restaurant on Hilltop, Baguio City, via an unnamed Street leading to Second Kayang Street (Please see sketch, Exhibit '14').

Before reaching William's Restaurant, the two stopped in front of a barber shop and it was there that the accused and Sawilan saw Joseph Tomali and Fermin Cayabas inside William's Restaurant. The two invited the accused and Sawilan to join them and the latter acceded to such invitation.

Joseph Tomali ordered 8 bottles of beer - two for each of them. It took the four up to almost 6 o'clock in the evening that day to consume the beer ordered by Tomali, and after they had consumed the same, the accused and Sawilan left William's Restaurant and proceeded to Abanao Street, taking the route they had taken in going to William's Restaurant from Albger Building, then via Chugum St. (Please see sketch - Exhibit '14'). From Abanao St., however, they proceeded to where Empire Cinema is and there they waited for a taxi which Sawilan took for a ride home to Aurora Hill, with the accused telling Sawilan that he (Balad) would proceed to Sub-Station 6 of the Baguio City Police.

The accused then proceeded to Tionsan Bazar at Magsaysay Avenue and while there he met Murphy Callian, a friend in high school days, who invited him to La Trinidad, Benguet. It was then 6 o'clock when he and Callian left Magsaysay and reached La Trinidad shortly thereafter. He passed the night that day in Pico, La Trinidad in the house of a friend of Callian but whose name he does not know, and the following day, at 7 o'clock in the morning of October 27, 1992, the accused left La Trinidad and proceeded to the Philippine Rabbit Station at Magsaysay Avenue. From there, he proceeded to the parking space for vehicles bound for Quezon Hill. Here he boarded a jeep for home at Purok 2, Barangay Fairview.

When he was about to reach his house, he overheard from the radio that there was a shooting at Kayang Street at 4:30 o'clock in the afternoon of October 26, 1992 and that he likewise heard that he was the suspect. Surprised at what he heard, he hastened to his house to verify what he heard. He turned on his radio set thereat and again he heard the announcement in the radio that indeed there was a shooting in the late afternoon the day before and that indeed he was the suspect therein. With the announcement in the radio, the first thing that came to his mind was to (e)ntertain fear, so he went to Gusing, Naguilian, La Union for his safety, reaching the place at 12 o'clock noon that day. But before leaving his house, he left a note with a neighbor addressed to his mother and his sister-in-law, Helen Balad. In the letter the accused told his mother and sister-in-law that he was going to Naguilian but asked

them to go immediately to Captain Tequi-in, his immediate superior, and to Major Aguitania, his administrative officer, to inquire from them what was all about the accusation against him.

At 2 o'clock in the afternoon of that day, October 27, 1992, the mother and sister-in-law followed him at Naguilian. So he related to them what really happened and expressed to them his intention to surrender. Then in the night of October 28, 1992 - after the accused had stayed in the house of his uncle for one (1) night and two (2) days - Major Aguitania, Captain Tegui-in and Patrolman Lipa-en with the mother of the accused - went to Gusing, Naguilian, La Union to accept the voluntary surrender of the accused.”[10]

Elaborate as this defense chronicle may be, the undeniable fact is that it has glaringly failed to prove the physical impossibility of appellant being present at the scene and time of commission of the crime. It flies in the face of the positive identification of appellant by disinterested witnesses as the person who shot Wenceslao Doctolero. It thus falls within the long established rule that alibi -- the much abused sanctuary of felons and which is considered as an argument with a bad reputation -- can not prevail over the positive testimonies of prosecution witness.[11]

The court declaration of Edwin Sabalburo and Charlie Lim, both neutral and disinterested parties, are so forthright, unwavering and categorical as to fully persuade us that they are indeed telling the truth. No evidence whatsoever has been introduced that these two eyewitnesses have any ill motives to testify against appellant. As we have time and again stressed, where there is no evidence that a prosecution witness was actuated by improper motives, the presumption is that he is not so actuated and that he would not prevaricate and cause damnation to one who had brought him no harm or injury.[12]

Appellant cites alleged inconsistencies in the testimony of said eyewitnesses, particularly vis-a-vis their statements given to the investigators. However, as between an affidavit and actual testimony in court, the latter will prevail since the unreliability and inaccuracy in the preparation of affidavits is a matter of judicial knowledge and experience. Besides, the supposed inconsistencies are on minor details and do not necessarily discredit their credibility[13] but, on the contrary, lend credence to their testimony since they indicate that the witnesses were not coached to fabricate or dissemble.

Appellant contends that there is a serious conflict in the prosecution evidence in that according to the eyewitnesses, he was armed with and used a short firearm when he shot the victim. On the contrary, he argues, the expert evidence for the prosecution shows that the bullet recovered from the head of the victim is a 5.56 mm. slug, or a bullet for an armalite rifle which is a long firearm. He adverts to the supposed testimonies on this aspect of the medico-legal officer, Dr. Fernandez, and Isabelo D. Silvestre, Jr., ballisticsian of the National Bureau of Investigation.

Regrettably, appellant has excerpted some passages out of context from the testimonies of the aforementioned witnesses to subserve his purpose. We are, therefore, constrained to reproduce more completely their material averments, starting with Dr. Fernandez who merely opined as follows:

“Q. Are you an expert on the kinds of firearms?

A. No, your honor. Anyway I can answer that. It's up to the court to determine. At this instance, we cannot determine or estimate as to the caliber of gun. We can only estimate the distance of firearm at the point of the body penetrated but not the caliber because of the nearness of the weapon fired creating a larger wound than expected but from the slug we recovered and the effect brought about we can estimate as to what caliber based on the slug recovered.

Q. Now doctor, this slug that was recovered, you said you can make an estimate from what caliber. What was that slug recovered from the head of the victim?

A. The slug was a probable armalite slug.

Q. And the size of the slug, did it match with the point of entry of the wound?

A. I can not say because of the nearness of weapon and as I have said th(at) would create a larger wound than expected and this instance of the wound created was large and irregular” (Italics supplied).[14]

In his turn, and drawing upon his admitted expertise in the science of ballistics, Isabelo D. Silvestre, Jr. made a more extensive and specific explanation of his findings and conclusions, to wit:

“Q. What kind of examination did you conduct on the specimen submitted for ballistics examination?

A. Ballistic examination, sir.

Q. What is the result?

A. Examination made on the evidence bullet marked A reveal that it is a caliber 5.56 mm pocketed bullet and was fired to (sic) the barrel of a caliber 5.56 firearm.

Q. Now, when you say Caliber 5.56... When you say that the specimen submitted is a bullet Caliber 5.56 mm are you saying that this is an armalite bullet?

A. It is an armalite bullet, sir, but in this particular case it was fired from a paltik firearm.

Q. Why do you say it was fired from a paltik firearm?

A. Because of the irregularities of the markings.

Q. Will you explain that, what are those irregularities that made you conclude that this particular bullet was fired from a paltik firearm?

A. Irregularities, meaning to say that the rifle marks is not a form, well-formed and different widths of lands and grooves are not uniform.

Q. When you say lands you are referring to the elevated area in the markings?

A. Yes, sir.

Q. And when you say grooves you are referring to the depressed area in the markings, is that it?

A. Yes, sir.

Q. Did you indicate this in you report that the evidence or the specimen submitted was fired from a paltik firearm?

A. No, sir.

Q. How come?

A. That’s why I am here to explain, sir, about my report.

Q. By the way, in the request for ballistics examination did it specifically request you to determine whether or not the specimen submitted was fired from a regular firearm or a paltik firearm, it did not?

A. No, sir.

Q. So, it is possible that this particular bullet was fired, from a long paltik firearm caliber 5.56 or armalite rifle, is that it?

A. As long as it is a paltik, sir.

Q. And likewise, it is likewise possible that this firearm was fired I mean this bullet was fired from a short firearm with caliber 5.56?

A. Possible, sir.

Q. This particular kind of bullet cannot be fired from a firearm other than a caliber 5.56.

A. No possibility, sir.

Q. Mr. Silvestre, you are saying that the bullet or it was not possible that the bullet or the slug which you examined was fired from a regularly manufactured gun, is that correct?

A. Yes, sir.

Q. It is because of the irregularities in the width, the lands and the grooves?

A. Yes, sir.

Q. My question is could it have been fired from a 22 caliber firearm, this slug which you examined?

A. As I have said, sir, they are the same caliber 22 and 5.56 are the same.

Q. So it could have been fired from a 22 caliber firearm? Yes or no?

A. Yes, sir.

Q. Because?

A. Caliber 5.56 mm and Caliber 22 are the same caliber, Your Honor, only they are different in the measurement used.

Q. So you are telling us that the said slug could have been fired also from a 22 caliber firearm not exclusive from a 5.56 firearm?

A. Yes, sir.

ATTY. MANDAPAT:

Q. So you are now telling us that the said slug could have been fired also from a 22 caliber firearm not exclusive from a 5.56 firearm?

A. Yes, sir.

Q. Possibilities are this might have been fired from a 22 caliber gun or it might have been fired from a 5.56 mm. gun?

A. Yes Your Honor.

COURT:

Q. When you say 5.56 mm you can also say that this is a 22 caliber firearm?

A. Yes, Your Honor.

Q. The same. They are the same. In other words, if you say 22 caliber gun it can also mean 5.56 mm.

A. Yes, sir.”[15] (Emphases ours.)

It is, therefore, clear that the argument of appellant on the supposed testimonial inconsistency regarding the length of the firearm used has been explained and debunked by the testimony of the ballistics expert that the said bullet could have been fired from a short “paltik” revolver, hence the eyewitnesses correctly and truthfully saw appellant using a short firearm. Further, appellant being a police officer, he could easily procure said home-made firearm and armalite ammunition in addition to his regularly issued .38 caliber revolver.

Another point raised by appellant is the alleged difference in the description of his attire from the time of the shooting of Dulatre at the ALB-GER Building and the shooting of Doctolero at the jeepney station at Kayang Street which can be reached on foot in just a matter of 2 to 5 minutes. This is such a flimsy and trivial detail that would not even deserve the attention of this Court, but we will indulge appellant in his desperate straits. The fact is that appellant could have very easily put a jacket over his camouflage uniform to avoid detection and this is not far-fetched. In truth, while testifying on the incident at the ALB-GER Building which was just before he was seen at the scene of the crime, appellant revealed that he was then wearing a black jacket with hood.[16]

All told, the prosecution has successfully discharged the onus probandi in this difficult case, but we cannot appreciate evident premeditation against appellant for insufficiency of evidence on this circumstance. His liability, however, is aggravated by the circumstance that he took advantage of his position as a policeman both in

the means adopted for and in the actual commission of the crime.

Appellant, on his part, failed to present either the necessary *facta probans* constitutive of his defense or the quantum of evidence to validate his protestations. His individual defensive theories, as above discussed, were roundly refuted by testimonial and expert evidence taken in light of doctrinal rules. He did, however, establish the mitigating circumstance of voluntary surrender to offset the aggravating circumstance against him, hence under the penalty for murder then obtaining, the medium period thereof, or reclusion perpetua, would be imposable.^[17] Albeit on a process of reasoning not completely correct, the lower court arrived at the same penalty.

WHEREFORE, the appeal of accused-appellant Adonis Balad is hereby DISMISSED and the assailed judgment of the court a quo is hereby AFFIRMED.

SO ORDERED.

Romero, and Mendoza, JJ., concur.

Puno, and Torres, Jr., J., on leave.

[1] Original Record, 1.

[2] *Ibid.*, 742; per Judge Benito Dacanay.

[3] Rollo, 73; Appellant's Brief, 10.

[4] TSN, May 10, 1993, 3-10.

[5] *Ibid.*, *id.*, 27.

[6] *Ibid.*, *id.*, 4-7.

[7] *Ibid.*, August 4, 1993, 4-9.

[8] *Ibid.*, *id.*, 4-9.

[9] *Ibid.*, April 6, 1993, 9.

[10] Original Record, 48-50.

[11] *People vs. Miranday, et al.*, March 23, 1995, G.R. No. 111581, 242 SCRA 620.

[12] *People vs. Ang Chun Kit*, G.R. No. 109232, December 29, 1995, 251 SCRA 660.

[13] *People vs. Nicolas, et al.*, G.R. No. 110116, February 1, 1995, 241 SCRA 67.

[14] TSN, April 6, 1993, 14-15.

[15] *Ibid.*, July 6, 1993, 6-11.

[16] TSN, June 20, 1994, 5.

[17] Under the same factual situation, even if the penalty for murder has now been increased to reclusion perpetua to death, with the amendment of Art. 248 of the Revised Penal Code by R.A. 7659, the imposable penalty would be the same under the rules in Art. 63 of the Code.

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