

JESUS UGADDAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 124914. July 02, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

For the death of fellow policeman Paulino Baquiran, petitioner Jesus Ugaddan was charged with homicide before the Regional Trial Court (RTC) of Isabela in following information:

“That on or about the 27th day of January, 1991, in the municipality of Tumauini, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there, willfully, unlawfully and feloniously, with intent to kill and without any just motive, assault, attack and shoot with a firearm one Paulino Baquiran, who as a result thereof, suffered a gunshot wound at the neck which directly caused this death.

“CONTRARY TO LAW.”[1]

After pleading not guilty, petitioner was tried and convicted in a decision, the dispositive portion of which reads:

“WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt of the crime of HOMICIDE as charged in the Information, penalized under Article 249 of the Revised Penal Code. The prescribed penalty for Homicide is reclusion temporal which is from twelve (12) years and one (1) day to twenty years. Applying the indeterminate Sentence Law, the minimum penalty should be taken from the penalty one (1) degree lower than the impossible penalty which is Prison Mayor in its full extent, the range of which is from six (6) years and one (1) day to twelve (12) years. Appreciating no mitigating circumstances in favor of the accused, the accused is accordingly sentenced from EIGHT (8) YEARS and ONE (1) DAY of PRISON CORRECTIONAL,, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY OF RECLUSION TEMPORAL as maximum; to pay the Heirs of the victim the sum of P60,000.00 as full settlement of the civil damages as stipulated upon on March 10, 1992, and contained in an Order of the Court dated March 10, 1992; and to pay the costs.

SO ORDERED”[2]

Dissatisfied, petitioner appealed to the Court of Appeals which affirmed the decision with slight modification, the pertinent portion of its ruling states:

“The Court a quo imposed on the Appellant an intermediate penalty of from Eight (8) Years and One (1) Day of Prison Correctional, as Minimum to Fourteen (14) Years Eight (8) Months and One (1) Day of Reclusion Temporal, as Maximum. As aptly observed by the Solicitor General, the minimum of the penalty imposed should be dominated as Prison Mayor not Prison Correctional. Except as hereinabove modified, the assailed Decision is in accord with the evidence on record and the law.

“IN THE LIGHT OF THE FOREGOING, the assailed Decision is AFFIRMED except as hereinabove modified. With costs against the Appellant.[3]

Failing to get an acquittal from his appeal, petitioner comes to this court via Rule 45 and imputes error to the appellate court in affirming the court a quo's findings of fact and in giving credence to the testimony of the prosecution's witnesses. In particular, petitioner contends (a) that he is innocent of the charge insisting for his defense that the victim grabbed the former's service pistol. Both of them were allegedly "grappling" for possession of the gun when suddenly two shots were heard. Petitioner admits that one of the shots was fired from his gun while it was pointed upwards due to the struggle[4] but alleges that the other shot was fired from outside the canteen's window. It was the latter shot according to petitioner, that hit the victim on the neck. He likewise assails the (b) credibility of the prosecution witness in that the proffered dying declaration of the victim as testified to by said witness was only fabricated by the latter.[5]

The antecedents as narrated by respondent court, essentially jibing with the trial court's finding and ably supported by the evidence on record, are as follows:[6]

"On January 27, 1991, at about 9:00 o'clock in the evening, Pat. Paulino Baquiran of the Police Station in Tamauni, Isabela was at the Geraldine Canteen, in Barangay Lingaling, of the same town, seated beside table No. 4 (Exhibit "C"). The Appellant Police Corporal Jesus Ugaddan, of the same police station, was also in the same canteen, seated beside table No. 1, about five (5) meters from where Pat. Baquiran was seated (Exhibit "C"). Orlando Tagacay, a driver, was seated beside the third table, near where Baquiran was seated (Exhibit "C"). In the meantime, Police Sergeant Romeo Tumolva arrived, followed by Pfc. Antonio Manuel and Pat. Juan Anapi, all of the same police station. Meanwhile, Emy,[7] an entertainer complained to the appellant that Baquiran poked a gun at her. The latter forthwith stood up from his table and approached Baquiran from behind, drew his .38 caliber service gun from its holster, positioned himself in front of the right of Baquiran and fired his gun at once at Baquiran, hitting the latter on the upper portion of the right side of his neck. The bullet exited from the left lateral aspect of the victim's neck. The Appellant then hurriedly left the canteen and rode in a tricycle with a companion. Baquiran, on the other hand, fell to the cemented floor of the canteen. Pat. Juan Anapi, Pfc. Antonio Manuel and Sgt. Romeo Tumolva rushed to where Baquiran was and with the help of Anapi and Manuel brought him on board the police panel to the Tamauni District Hospital. However, Baquiran was transferred to the Cagayan Regional Hospital under escort of Pat. Juan Anapi. On January 28, 1991 at about 12:15 o'clock, at dawn, Pat. Juan Anapi, in the presence of Dr. Brainard Vagay posed queries to Baquiran and the latter replied to Anapi's question. The latter wrote his questions and the answers thereto of Baquiran on a piece of paper (Exhibit "D"). Baquiran affixed his thumbmark on the said piece of paper with his own blood. Baquiran could not use his hand to affix his signature because dextrose was administered to him. However, Baquiran died on January 29, 1991 at about 3:30 o'clock in the morning. Dr. Brainard C. Vagay issued a Medico-Legal Certificate containing his findings on his examination of Baquiran:

"SPINAL CORD INJURY PROBABLY CERVICAL 2ndary to GSW NECK

P.O.E. 0.5-1 cm. anterior aspect midline upper portion of neck w/ contusion collar

P.O. EX. circular wound about 1-2 cms. base of neck lateral aspect (L)." (Exhibit G")

and issued a Certificate of Death attesting the demise of Baquiran and the cause of the latter's death as "cardio-respiratory arrest secondary to gunshot wound xxx." (Exhibit "H") Orlando Tayag, Pfc. Antonio Manuel and Pat. Juan Anapi later executed their respective affidavits. (Exhibits "D", "F"& "E")."

The petition ought to fail.

By his own admission, petitioner's defenses, which necessitate the determination of who is telling the truth, raises questions of fact and credibility. On such issues, applicable herein, is the hornbook precept that factual findings of the trial court, specially when affirmed by the Court of Appeals, are deemed final and conclusive by this Court when supported by substantial evidence. Such findings should not be disturbed absent any significant

facts and circumstances that were overlooked, ignored or disregarded by the trial court which if considered would affect the outcome of the case.[8]

Upon scrutiny of the records, the Court can neither accede to nor accept petitioner's unbelievable proposition that there was a grappling incident and that while said grappling was in progress, the victim was hit by a shot from outside the canteen. Such contention was correctly rejected by the trial court which is in the best position to weigh conflicting testimonies.[9] Moreover, evidence to be believed must not only proceed from the mouth of a credible witness but must also be credible itself.[10] Petitioner's version can not be approved as probable under the circumstances by the common experience and observation of mankind.[11] First, the grappling incident is not true and did not occur for as properly explained by the responding court:

"If Baquiran was himself armed, it was incomprehensible why he would still grab the gun of the Appellant from its holster when he could have used his gun. And then again, the Appellant wanted the court a quo to believe that Baquiran was already so inebriated such that he was, already stopping (sic) stance beside his table. On the other hand, the Appellant claimed that he was not yet inebriated at the time. It defies credulity that Baquiran still had the presence of mind and the physical strength to grapple with the Appellant for the possession of the gun. As can easily be gleaned from his pictures attached to his bond (page 3, Record) the Appellant is stocky and broad shouldered. He could have overpowered Baquiran with facility." [12]

Second, in conformity with the trial court, the following disquisition of respondent court is fatal to petitioner's contention that the victim was hit by a shot from outside the canteen's window:

If, as claimed by the Appellant, a person fired a gun from the right side and outside the canteen and said person was standing as the Appellant and Baquiran, who were standing, were grappling for the gun and shot Baquiran on the anterior aspect, midline upper portion of his neck, then the bullet must have exited from the left midline upper portion, left lateral aspect of the neck of the victim. However, as shown by the Medico-Legal Certificate of Dr. Brainard Vagay, Exhibit "G" the bullet exited from the base left lateral aspect of the neck of the victim. The trajectory of the bullet must have been downward instead of in a straight direction. On the other hand, the trajectory of the bullet, as shown in Exhibit "G" is consistent with the testimony of Orlando Tagacay that the Appellant was standing while Baquiran was still seated when the Appellant shot Baquiran on the Neck.[13]

Third, the two-shot theory was a product of wild imagination merely concocted by petitioner in his vain attempt to exculpate himself from his wrongful deed. It cannot stand against the positive declaration of a credible eyewitness who testified that he heard only one shot which was fired from petitioner's gun.[14] This single shot theory was affirmed and corroborated on the stand by the prosecution's rebuttal witness who is also a police officer present in the scene of the crime.[15] Again, the Court agrees with the trial court's well-explained rejection of the proffered two-shot theory story. Thus,

"x x x (I)n the Counter-Affidavit presented and signed by the accused marked as Exhibit "3" for the defense, executed on April 2, 1991, by the accused before Raymundo L. Aumentado, Public Attorney III, the claim of the accused that there were two (2) gun reports was not surprisingly not stated which fact he could have easily stated without being asked by his lawyer because this is a vital fact which if true would casts serious doubt as to whether or not the victim was hit by the gun which they grappled for the possession of or it was the gun allegedly fired outside the canteen through the window. To the mind of the Court, the defense that two (2) gun reports were fired was merely an afterthought which was conceived only during the presentation of the evidence for the defense. It was utmost a self-serving assertion of the accused as against the positive and categorical testimony of the prosecution witnesses.[16]

Petitioner next questions the credibility of the police officer (Pat. Anapi) who testified on the victim's alleged dying declaration prior to his death. The declaration taken by said police officer was merely thumbmarked by the victim. Petitioner, thus, posits that declaration was merely fabricated by said witness. The declaration contains the

following:

Q: Do you believe in GOD?

A: Yes.

Q: What is your name?

A: Paulino Baquiran, Jr.

Q: What happen (sic) to you:

A: I was shot.

Q: Who shot you?

A: Cpl. Tuting Ugaddan.

Q: When?

A: At about 9:00 o'clock, January 27, 1991.

Q: Where?

A: At the Geraldine (sic) Canteen, Lingaling, Tumauni, Isabela.

Q: How do you feel?

A: So painful."^[17]

As mentioned, the issue raised is one of credibility of witnesses for which the Court adheres to the settled ruling that the trial court's assessment and evaluation thereof are generally dealt with great weight and respect on appeal due to the latter court's unique position of having observed that elusive and incommunicable evidence of the witness deportment on the stand, which opportunity is denied to the reviewing court.^[18] No cogent reasons or any substantial facts or circumstances were overlooked, ignored or disregarded by the trial and appellate courts which if considered might alter the outcome of the case.^[19] The absence of the declarant's signature in the written declaration was adequately explained in that at the time it was taken, evidence on record shows that a dextrose was attached to the victim's hands. Moreover, no ill motive can be attributed to the police officer who took the declaration. In fact, said police officer and petitioner are childhood friends. In addition, as public officer, he has in his favor the presumption that official duty has been regularly performed^[20] which cannot be overcome by suspicions or conjectures.^[21] Specially when no evidence to the contrary was shown that he was wrongfully motivated or was biased or had a grudge against a comrade-in-arms (petitioner).^[22] It was the officer's duty to investigate crimes and make inquiries from the victim as to what had happened. The defense simply failed to offer any piece of evidence attributing to said prosecution witness any foul motive to falsely accused and incriminate a fellow officer in so grave a crime.^[23] Absence of evidence as to improper motive actuating said witness of the prosecution strongly tends to sustain that no such motive existed and, thus, his credibility is strengthened^[24] and his testimony is worthy of full faith and credit.^[25]

Dying declaration though generally hearsay are admissible in evidence as an exception to the hearsay rule pursuant to Section 37 of Rule 130.^[26] The above declaration under the factual milieu of this case, has the vestiges of the accepted elements for the admissibility of a dying declaration which are:

- the declaration must concern the crime and surrounding circumstances of the declarant's death;
- it was made at a time when the declarant was under the consciousness of an impending death;
- the declarant would be competent to testify;
- the declaration is offered in any case in which the decedent is the victim.^[27]

Said declaration pertains to the identity of the declarant's assailant and the instances that transpired concerning what happened to him. At the time that declaration was made, the declarant was hospitalized, wounded on the throat, and was very weak.[28] Combining these circumstances with the victim-declarant's aversion of pain creates upon the latter impression that his death is imminent and immediate. The enigma of contemplating of a death-at-hand produces the most powerful consideration that impels and induces the mind to speak the truth – "a situation so solemn and awful as to be considered by law as creating an obligation equal to that which is imposed by an oath administered in court".[29]

On his competency to testify, there is no allegation nor evidence on record which would support the slightest impression that the declarant would have been incompetent to testify had he survived. At the time of his death he was a member of the police force and is presumably capable of perceiving, retaining what has been perceived and expressing what has been retained. These circumstances suffice to sustain the presumption of his competency to testify at the material time.

Even assuming that the proffered dying declaration is inadmissible, it would in no wise affect the overwhelming weight of evidence pointing to petitioner's guilt considering the testimony of several eyewitnesses who positively identified petitioner as having pointed his gun and later shot the victim pointblank.[30]

Under Article 249 of the Revised Penal Code, homicide is punished by reclusion temporal. There being neither mitigating nor aggravating circumstance, the imposable penalty is the medium period pursuant to Article 64(1) of the said Code. Applying the Indeterminate Sentence Law, petitioner could be held to suffer an indeterminate penalty from six (6) years and one (1) day - twelve (12) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day - seventeen (17) years and 4 months of reclusion temporal medium, as maximum.

WHEREFORE, finding no reversible error, the assailed decision of the Court of Appeals is AFFIRMED in toto. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, and Panganiban, JJ., concur.

Davide, Jr., J., did not take part in the deliberation, was on sick leave.

[1] RTC Records, p. 41. The victim was properly identified as Baquiran, Jr.

[2] RTC Decision dated September 10, 1993 promulgated on October 19, 1993 penned by Judge Crispulo A. Nunez of RTC Branch 22, Cabangan, Isabela RTC Records, pp. 147-158; CA Rollo, p. 213.

[3] CA Decision promulgated November 27, 1995 penned by Justice Romeo Callejo, Sr. with Justices Antonio Martinez and Pacita Canizares-Nye (now deceased), concurring. Annex "A" of the Petition.

[4] TSN., Jesus Ugaddan, February 2, 1993, pp. 33-34.

[5] Petition, pp. 6-7; Rollo, pp. 13-14.

[6] CA Decision, pp. 1-2; Rollo, pp. 30-31.

[7] Record spells the name of this entertainer as Amy. (TSN, January 6, 1992, Pat. Juan Anapi, p. 10.)

[8] People v. Dizon, G.R. No. 120957, August 22, 1996 citing People v. Gomez, 229 SCRA 138 (1994); Tolentino v. CA, 150 SCRA 26 (1987) cited in Castillo v. CA, G.R. No. 106472, August 7, 1996; People v. Vallador, 257 SCRA 515 (1996); People v. Acob, 316 Phil. 877; People v. Legaspi, 316 Phil. 261.

- [9] *People v. Alimon*, 257 SCRA 658 (1996).
- [10] *People v. Salvatierra*, 257 SCRA 489 (1996).
- [11] *People v. Pidia*, 249 SCRA 687 (1995).
- [12] CA Decision, p. 6; Rollo, p. 35.
- [13] CA Decision, pp. 6-7.
- [14] TSN, Orlando Tagacay, November 6, 1991, p.11.
- [15] TSN, Romeo Tumolva, March 15, 1993 p. 6.
- [16] RTC Decision, pp. 10-11.
- [17] Exh. "L"; RTC Records, p. 14.
- [18] *People v. Tanedo, Jr.* G.R. No. 110405, January 2, 1997; *People v. Tan, Jr.*, G.R. No. 103134-40, November 20, 1996; *People v. Paragua*, 257 SCRA 344 (1996); *People v. Sotto*, 255 SCRA 344 (1996); *People v. Vinas, Jr.*, 315 Phil. 491.
- [19] *People v. Ferrer*, 255 SCRA 79 (1996).
- [20] Rule 131, Section 3 (m).
- [21] *New Testament Church of God v. CA*, 316 Phil. 330.
- [22] See *People v. Morico*, 316 Phil. 270.
- [23] *People v. Luayon*, G.R. No. 105672, August 22, 1996.
- [24] *People v. Obngayan*, 55 SCRA 465.
- [25] *People v. Pano*, 257 SCRA 274, 283 citing *People v. Villafuerte*, 232 SCRA 226; *People v. Alimon*, *supra*.
- [26] Dying Declaration. – The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.
- [27] *People v. Hernandez*, 205 SCRA 213; *People v. Nabor*, 185 SCRA 615; *People v. Almeda*, 124 SCRA 486; *People v. Balbas*, 122 SCRA 859.
- [28] TSN, *Ibid.*, p. 29.
- [29] *U.S. v. Gil*, 13 Phil. 549.
- [30] *People v. Reodico*, 249 SCRA 309 (1995).

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