

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR MOLINA Y GATUS, ACCUSED-APPELLANT.

G.R. No. 125397. August 10, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Decision of the RTC of Malabon, Metro Manila, Branch 170 convicting accused-appellant Nestor Molina of the crime of murder qualified by treachery.[1]

The Information[2] against Molina states:

"That on or about the 11th day of October 1994, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, conspiring, confederating and mutually helping with (sic) one another, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said gun one HERMINIO JORGE Y PERALTA, hitting the victim on his body, thereby inflicting upon the victim gunshot wounds, which caused his immediate death.

"Contrary to law."[3]

Molina pled not guilty and underwent trial. The prosecution relied heavily on the eyewitness account of Ernesto Mandia, a pedicab driver who plies the route of Bayan Malabon and Sipac, Navotas. He testified that on October 11, 1994 at about 4:40 A.M., he parked his pedicab at the corner of Baradero and M. Naval Street, Navotas. He was resting while waiting for passengers. He then noticed Molina, alias "Etoy," with two companions. Molina was talking with one while the other stood across the street.

At 5:20 A.M., a passenger jeepney driven by Herminio Jorge came from the direction of Manila. It was flagged down by one of Molina's companion and it stopped at the corner of Baradero Street. Molina, with a gun in his hand, and one of his companions approached Jorge. Molina went to the right side of the driver's seat while the other positioned himself on the left side. From a distance of an arm's length, Molina fired four (4) times at Jorge who was sitting at the driver's seat. Thereafter, they walked away casually from the scene of the crime.[4]

Jorge died immediately. The autopsy conducted by Dr. Florante F. Baltazar revealed that Jorge sustained eight (8) external injuries - four (4) gunshot wounds, two (2) abrasions and two (2) lacerations. He also suffered from some fractures.[5] The shooting was investigated by SPO4 Jose Andrade.

The amount of fifteen thousand pesos (P15,000.00) was spent for the funeral of Jorge. The family likewise spent for the food during the wake and for a band.[6]

The accused-appellant proffered the defense of alibi. He said that as of August 17, 1994, his family has already transferred residence from Dulong Tangos, Navotas to Sta. Lucia, San Miguel, Bulacan. They lived in the house of Ricardo Sioson, his father-in-law. He admitted that he knew Jorge as they were previous neighbors. He was unaware of any reason why the family of Jorge charged him with the crime at bar.[7]

Accused-appellant's wife Luzviminda and his father-in-law corroborated his alibi. Both testified that he was in their house in San Miguel, Bulacan on the day and time of the shooting of Jorge.

As aforesated, the trial court convicted the accused-appellant. He was sentenced to suffer the penalty of reclusion perpetua together with all its accessory penalties. He was also ordered to indemnify the heirs of Jorge the amounts of fifteen thousand (P15,000.00) as actual damages, fifty thousand pesos (P50,000.00) as civil indemnity and the cost of suit.

In this appeal, accused-appellant contends:

I

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE AND UNCORROBORATED TESTIMONY OF PROSECUTION WITNESS ERNESTO MANDIA.

II

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."

We find no merit in the appeal.

First. Accused-appellant was positively identified by Mandia. There is no reason to disbelieve the testimony of Mandia. He witnessed the incident from a distance of two arm's length. He has known the accused-appellant some seven to eight months before the incident. Like Mandia, accused-appellant also drove a tricycle.[8]

The attempt of accused-appellant to impute ill-motive against Mandia is futile. He urges us to deduce this ill-motive from the fact that Mandia denied that accused-appellant's picture was shown to him for identification. This little detail hardly matters. As discussed above, Mandia could not have erred in identifying accused-appellant as they knew each other. The records also belie accused-appellant's claim. Contrary to his allegation, Mandia admitted that the brother of Jorge showed appellant's picture to him.[9] Neither can ill-motive be deduced from the failure of Mandia to report the crime immediately to the authorities. Mandia satisfactorily explained the 26-day delay. He said that he was "stunned" by the incident and was still fearful when he reported to the police authorities.[10] There is another reason why Mandia's testimony is credible. His eyewitness account is corroborated by the autopsy report.[11] As observed by the trial court:

"In the instant case, the court noted that the testimony of lone eyewitness Ernesto Mandia was straightforward and candid and unshaken on cross examination by the defense counsel. The main thrust of the testimony of Mandia is to the effect that he saw accused Molina shot (sic) Herminio Jorge in the early hours of October 13, 1994. His detailed and graphic account of the actual shooting and killing conforms with the undisputed medico legal findings of Dr. Baltazar. Mandia declared that he saw accused Molina coming from the back side of the passenger jeepney went (sic) directly towards the driver's seat at its rightside. At the distance of two arms length away, accused fired upon the victim four (4) times. Dr. Baltazar testified that HERMINIO Jorge sustained four (4) gunshot wounds. As far as gunshot wound no. 2 is concerned, Dr. Baltazar stated that the relative position of the assailant would be in front but more on the right side which position would be the same with respect to gunshot wound no. 3 if the extremities would reflect on the other side. The medico legal report (Exhibit 'H') reveals that gunshot wound no. 5 is directed downwards, forwards and existing (sic) at the anterior middle 3rd of the right forearm whereas gunshot wound no. 6 is directed downwards, forwards and existing (sic) at the anterior distal 3rd of the same forearm. Taking into account the trajectory of the bullets and point of entries and exists (sic), gunshot wounds no. 5 and 6 would not have found their marks on the forearm of the victim had not the assailant been at his right facing him. In addition, Dr. Baltazar said that the absence of

tattooing only indicates that the distance of the muscle (sic) of the gun from the entry points of the injuries sustained by the deceased would only be 24 inches and above." [12]

This is not all. Accused-appellant's alibi cannot prosper for he failed to demonstrate the physical impossibility for him to be at the situs of the crime. As pointed out by the trial court, Navotas to San Miguel Bulacan can be negotiated in two to three hours by public utility vehicle.

Second. We find the penalty imposed on accused-appellant in accord with law.

The commission of the crime was attended by treachery. 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 ensure its execution without risk to himself arising from the defense which the offended party might make. [13] For treachery to be appreciated, two conditions must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) that said means of execution be deliberately and consciously adopted. [14]

Both conditions are present in this case. The victim was shot while seated on the driver's seat. The shooting was sudden. The accused-appellant was about an arm's length away when he shot the victim. Settled is the rule that the suddenness of the attack without the slightest provocation on the part of the victim who was unarmed and had nary an opportunity to repel the aggression or defend himself, ineluctably qualifies the killing with alevosia. [15]

Evident premeditation can not however be appreciated since the prosecution failed to establish that the appellant killed the victim pursuant to a preconceived plan. Nevertheless, the crime committed is still murder qualified by treachery.

All considered, the prosecution has proved the guilt of appellant beyond reasonable doubt. Murder is defined and punished under Article 248 of the Revised Penal Code which prescribes the penalty of reclusion perpetua to death. Since neither mitigating nor aggravating circumstances are present in the commission of the crime, the lesser penalty of reclusion perpetua should be applied.

IN VIEW WHEREOF, the Decision of the trial court is affirmed in toto. Cost against the accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] The case is Crim. Case No. 15597 MN. The judge is Hon. Benjamin T. Antonio.

[2] The prosecution moved to amend the Information naming Angelito Barcelenio and Noel Barcelenio as the John Does. The motion was, however, denied by the trial judge as the prosecution at that time had already started presenting its evidence.

[3] Records, p. 1.

[4] TSN, July 10, 1995, pp. 2-3.

[5] TSN, November 14, 1995, p. 6.

[6] TSN, August 15, 1995, p. 18.

[7] TSN, Jan. 16, 1996, pp. 2-4.

[8] TSN, July 17, 1995, p. 13.

[9] Ibid., p. 16.

[10] Ibid., p. 19.

[11] Records p. 136.

[12] RTC Decision, pp. 4-5; Rollo, pp. 32-33.

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

[14] People vs. Porras, 255 SCRA 514 (1996).

[15] People vs. Crisostomo, 293 SCRA 65 (1998), citing People vs. Apongan, 270 SCRA 713 (1997).

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