DELFIN ABALOS, PETITIONER, VS. COURT OF APPEALS, RTC-BR. 38, LINGAYEN, PANGASINAN, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 125434. December 22, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Liberato Damias visited his girlfriend at her house in San Isidro, Rosales, Pangasinan, on the night of 27 January 1993. He did not realize that that would be his last rendezvous with her. He was gunned down soon after and died slowly in her arms. His assailant apparently driven by extreme jealousy hurriedly fled leaving the lovers to the mercy of their fate.

On 26 February 1993 an Information was filed before the Regional Trial Court of Lingayen, Pangasinan, charging petitioner Delfin Abalos with murder for the killing of Liberato Damias.[1] The Information alleged that the accused, using an unlicensed firearm, with intent to kill, employing treachery and taking advantage of superior strength, shot and killed Liberato Damias. It further alleged that Delfin Abalos should be considered a recidivist having been previously convicted by the Regional Trial Court of Pangasinan.[2]

The bereaved Veronica Bulatao testified that she had known petitioner Delfin Abalos for several years as they were neighbors, their houses being only fifty (50) meters from each other.[3] According to her, Delfin was courting her since June 1992 but she jilted him since she was already involved with the now deceased Liberato Damias. In fact, she said, Delfin was enraged when she rejected him that he even threatened to kill her if she decided to marry Liberato.[4] He relentlessly pursued her even when she left San Isidro to reside temporarily in San Juan and Sta. Ana, Manila.[5] She also testified that a few days before he shot Liberato Delfin went to her house ostensively to watch television. But when she learned that his real intention was to see her she told him not to visit her again.[6]

Veronica further narrated that on the night of 27 January 1993 Liberato visited her at around 7 o'clock. As she was entertaining him at the balcony of their house she noticed petitioner walking back and forth in front of their house. He was just about four (4) meters or so away from them.[7] As she was ill at ease with petitioner’s conspicuous demeanor below, she asked Liberato to transfer to their sala where they could continue talking. When they moved inside, Liberato sat near the entrance of the house with his left side towards the door with Veronica sitting in front of him. The positions of Liberato and Veronica and their proximity to one another could have heightened Delfin's animosity that he suddenly appeared at the door and in a semi-kneeling position shot Liberato on his left side.[8] Liberato could only embrace Veronica as blood trickled from his mouth and he desperately gasped for breath. Veronica positively identified petitioner Delfin Abalos as he scurried away since the sala of her house was adequately lit by a kerosene lamp and he was only one (1) meter away from them when he pulled the trigger.[9]

SPO1 Melchor Bernabe recounted that on the night of 27 January 1993 the barangay captain of San Isidro went to the police station and reported the shooting incident to him.[10] So he proceeded to the crime scene with the Chief

of Police and SPO2 Ruben Pitok to investigate the matter. Upon reaching the house of Veronica Bulatao he saw Liberato's body sprawled on the floor. He asked Veronica who the assailant was but she was in incoherent and in a state of shock. It was only later at the police station that she was able to reveal the identity of the gunman. Upon learning that Delfin Abalos was positively identified by Veronica, SPO1 Bernabe went to the house of Delfin and accosted him. Then he brought him to the station for further questioning.[11]

Dr. Ingrid Gancinia, Municipal Health Officer of Rosales, Pangasinan, testified that Liberato died from a bullet wound which pierced the lower part of his left armpit, and that there were powder burns on the victim's body indicating that he was shot at a very close range, probably around six (6) inches away.[12]

But Delfin denied killing Liberato. He claimed that on the night of 27 January 1993 he worked with his father in the tobacco fields from 3:00 p.m. until midnight,[13] and the only time he left was from 6:00 to 6:30 in the evening to get supper from their house. He stopped working at midnight and went straight home to sleep. He only woke up at 4:00 o'clock the following morning when his father told him that there were some policemen downstairs looking for him. After telling him that he was a suspect in the shooting, his room was searched and then he was brought to the police station for investigation.[14]

Celestino Abalos, Delfin's father, together with Ruben Fragata and Virgilio Ortiz, tried to corroborate Delfin's alibi. The three (3) all claimed that they had supper near the tobacco fields from 6:30 to 8:00 p.m., and that after eating, they returned to the fields to finish their work. They also said that from the time they finished dinner Delfin never left the fields until midnight.[15]

Jerry Fernandez, another defense witness, testified that after spraying insecticide on his plants he took a bath at a well near the tobacco plantation from 8:00 to 9:00 p.m. during which he saw Delfin around twenty (20) meters away working at the fields,[16] and that before heading for home he noticed Delfin still busy with his work.

On rebuttal, Inocencio Bulatao, Veronica's father, testified that Delfin, contrary to his alibi, was not in the fields but in their house prior to the shooting. In fact Inocencio said that at around 7:00 p.m., Delfin was in their house watching television with his family as they customarily allowed their neighbors to do so. When Liberato arrived Veronica took him to the balcony where they talked. An hour later, Inocencio turned the television off, so petitioner left their house,[17] and Inocencio proceeded to their kitchen to rest. Then he heard a shot prompting him to rush to the sala to check if anything wrong happened to his daughter.[18] But Veronica told him that Delfin shot Liberato. Inocencio then called out to his neighbors for help.[19]

Delfin Abalos' alibi failed to convince the trial court. It found petitioner guilty of murder and imposed upon him an indeterminate prison term of fourteen (14) years, eight (8) months and one (1) day as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum. Petitioner was also ordered to pay the heirs of the victim P38,000.00 for actual damages, P50,000.00 for compensatory damages and P30,000.00 for moral damages.[20] However, the aggravating circumstance of use of an unlicensed firearm was not appreciated as the weapon was never recovered.

The Court of Appeals sustained on appeal the award for damages but set aside the conviction of petitioner for murder and found him guilty instead of the lesser crime of homicide. The appellate court concluded that the aggravating circumstance of treachery was not indubitably established to qualify the killing of Liberato to murder and reduced petitioner's sentence to an indeterminate prison term of twelve (12) years of prision mayor maximum to seventeen (17) years and four (4) months of reclusion temporal.[21] His motion for reconsideration was denied. Hence, petitioner comes to us on a petition for review.

Petitioner argues that the testimony of the lone witness, Veronica Bulatao, was not credible; that the Court of

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Appeals erred in considering his three (3) prior convictions as basis for finding him guilty of homicide; and, his guilt was not proved beyond reasonable doubt.

In an apparent attempt to destroy Veronica's credibility, petitioner asserts that her actions prior to the shooting were highly questionable. If indeed he had threatened her life, then why did she still allow him to enter their house that night? If she really saw him suspiciously walking back and forth near their house, why did she not warn Liberato of the impending danger?[22]

Petitioner also cites inconsistencies in her testimony, such as her assessment of the time frame when he courted her and her statements as to when she last saw him prior to the commission of the crime.[23] He even went to the extent of saying that Veronica's act of allowing him to court her despite her existing relationship with Liberato showed her deceitful character, hence, her unreliability as a witness.

We disagree. Veronica's actions prior to the incident and the alleged inconsistencies in her testimony do not affect her credibility in positively identifying Liberato's killer. The fact remains that she was only a meter away when she saw Delfin shot Liberato. Also, a kerosene lamp lighted the sala thus enabling her to easily recognize Delfin as the gunman. And such illumination produced by a kerosene lamp has indeed been held sufficient to allow a witness to identify a person.[24] Veronica's competency in identifying petitioner is further strengthened by the fact that they were neighbors for several years and so she was very familiar with him. Veronica even saw him immediately before the shooting as he paced the barangay road only a few meters away.

More importantly, we have consistently reiterated that the credibility of witnesses is a matter best assessed by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude.[25] Thus, unless certain facts of substance and value have been overlooked, which if considered might affect the result of the case, the trial court's appraisal of the credibility of a witness should not be overturned.[26] The trial court ruled that Veronica testified in a clear, straightforward and flawless manner.[27] We see no cogent reason to deviate from that observation.

Petitioner holds that the Court of Appeals erred in giving weight to his three (3) prior convictions as a basis for finding him guilty. He maintains that his past convictions for murder, homicide and frustrated homicide do not prove that he was capable of killing Liberato.

Although it is true that the appellate court mentioned his prior convictions in its decision, such was not the basis for finding him guilty of homicide. The appellate court only mentioned the prior convictions to show that Veronica took his death threats seriously.[28] The decisive factor for convicting petitioner was still the positive identification made by Veronica during the trial.[29] Obviously, even without mentioning his earlier convictions, the Court of Appeals would have still concluded that Delfin did kill Liberato.

The last issue raised by petitioner is that the appellate court erred in finding him guilty beyond reasonable doubt of homicide. He argues that he had a solid alibi to prove his innocence and that the paraffin test yielded negative for powder burns on his hand, hence confirming that he never fired the shot that killed Liberato.

For alibi to prosper, petitioner must not only prove that he was not at the crime scene but that it was also physically impossible for him to have been present there at the time the offense was committed.[30] He miserably failed to satisfy the second requisite. Delfin himself testified that the distance between the tobacco fields to Veronica's house was only around 400 meters and it only took eight (8) minutes to traverse such path.[31] Evidently, it was not impossible for Delfin to be present at the locus criminis.

Further, it has been long established that alibi cannot prevail over the positive identification of the accused by a credible witness who had no ill motive to falsely testify.[32] The absence of ill motive on Veronica's part was

even substantiated by petitioner in his testimony. Thus -

> Q:
>
> Since you admitted that your family and the family of the Bulataos have no misunderstanding whatsoever, can you tell the honorable court the reason why Veronica Bulatao pinpointed you as the one who shot Liberato Damias.
>
> A:
>
> I don't know of any reason, sir.
>
> Q:
>
> As far as you are concerned Veronica Bulatao has no ill-motive to testify against you, is that what you mean.
>
> A:
>
> None, sir.[33]

Thus, contrary to petitioner's assertion, Veronica only testified against him to seek justice for Liberato's death, and not to arbitrarily implicate anyone just to put an end to her boyfriend's case.

Anent the paraffin test, it is true that it produced a negative result but such fact does not ipso facto merit Delfin's acquittal. This Court acknowledges that the absence of powder burns in a suspect's hand is not conclusive proof that he has not fired a gun.[34] In fact, the traces of nitrates can easily be removed by the simple act of washing one's hand.[35]

However, although we agree that Delfin was Liberato's assailant, we disagree with the sentence imposed by the appellate court. Murder, and not homicide, was committed.

The Court of Appeals, abiding by established jurisprudence, ruled that before treachery could be considered, two (2) conditions must be present. First, that the means, method or manner of execution employed would ensure the safety of the malefactor from the retaliatory or defensive acts of the victim; and second, that the perpetrator deliberately or consciously adopted such means of execution. However, the appellate court ruled that the prosecution failed to satisfy the second requisite there being no proof that petitioner deliberately sought such manner of executing the crime to ensure his own safety from any form of retaliation that the victim might have employed.[36]

The records, however, prove otherwise. Before the incident, Delfin walked back and forth on the barangay road, a few meters from the balcony where Veronica was entertaining Liberato.[37] He waited for the perfect opportunity to execute his fiendish plot. While Liberato cozily sat in Veronica's sala, devoting his full attention to her, petitioner suddenly appeared at the door from behind and without warning shot him. Surely, there is no other conclusion but that he deliberately and consciously employed such means of execution to ensure his own safety from any form of defense that Liberato might have used.

It should be remembered that the essence of treachery is the swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the latter.[38] This was what Delfin did. He attacked Liberato while he was deeply engrossed in conversation with Veronica, oblivious of the lurking peril to his life. The trial court was therefore correct in ruling that the crime committed was murder.

The Court of Appeals also ruled that although recidivism was alleged in the Information, the evidence introduced was insufficient to prove it as an aggravating circumstance. According to the appellate court, the certification

presented during the trial showing that Delfin was already on parole failed to state what crime he was previously convicted of.[39] As such, there was no way to determine if the prior crime committed fell under the same title as murder.

The records however reveal that petitioner himself openly admitted in court that he was previously convicted of three (3) other offenses. He said:

> Q:
>
> Is it not a fact Mr. Accused that you were previously convicted of murder, attempted homicide and homicide?
>
> A:
>
> I was convicted of Murder, Homicide and Attempted Homicide, sir.
>
> Q:
>
> This conviction of the crime of Murder was under Criminal Case No. L-1691, CFI, Lingayen Pangasinan and you were sentenced on July 20, 1978, is it not?
>
> A:
>
> That was Homicide, July 29, 1978, sir.
>
> Q:
>
> Who was your victim in that homicide case?
>
> A:
>
> Bernardo Valdez, sir.
>
> Q:
>
> About this murder case conviction, who was your victim?
>
> A:
>
> Ricardo Villamin, sir.
>
> Q:
>
> And when were you convicted in this murder case?
>
> A:
>
> I cannot remember already, sir. I was convicted first of Homicide, then attempted homicide and then murder.
>
> Q:
>
> And who was your victim in this Attempted Homicide case?
>
> A:
>
> Rodrigo Batucan, sir.[40]

This candid admission by petitioner of his prior convictions is sufficient to establish recidivism as a generic aggravating circumstance.[41] And since all of his earlier convictions fall under the same title of The Revised Penal Code , i.e., Crimes Against Persons (Title Eight), he can be properly considered as a recidivist.

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Petitioner should therefore be convicted of murder qualified by treachery, with the generic aggravating circumstance of recidivism. When he committed the crime, the imposition of the death penalty was still proscribed by the 1987 Constitution, thus he should only be sentenced to reclusion perpetua and not death. And since the penalty imposed is reclusion perpetua, an indivisible penalty, the provisions of The Indeterminate Sentence Law applied by both the trial court and the Court of Appeals cannot be invoked.[42]

WHEREFORE, the Decision of the Court of Appeals finding petitioner DELFIN ABALOS guilty of homicide is MODIFIED. He is instead adjudged GUILTY of MURDER with recidivism as a generic aggravating circumstance. He is therefore sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Liberato Damias P50,000.00 for civil indemnity, P30,000.00 for moral damages and P38,000.00 for actual damages, and to pay the costs.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Records, p. 9.

[2] The Information did not specify what crimes petitioner was previously convicted of, but by his admission he was found guilty by the Court of First Instance of Lingayen, Pangasinan, first of homicide, then of attempted homicide and later of murder (testimony of petitioner Delfin Abalos, TSN, 4 November 1993, p. 10).

[3] TSN, 8 July 1993, p. 15.

[4] Id., p. 23.

[5] Id., p. 30.

[6] Id., p. 36.

[7] Id., p. 17.

[8] Id., p. 19.

[9] Id., pp. 19-21.

[10] Id., p. 35.

[11] Id., pp. 36-43.

[12] TSN, 8 July 1993, p. 8.

[13] TSN, 4 November 1993, p. 16.

[14] Id., p. 7.

[15] Rollo, p. 57.

[16] TSN, 21 September 1993, p. 4.

[17] TSN, 8 November 1993, p. 5.

[18] Id., p. 18.

[19] Id., p. 19.

[20] Decision dated 3 January 1994, by Presiding Judge Antonio M. Belen, RTC-Br. 38, Lingayen, Pangasinan; Rollo, pp. 54-63.

[21] Decision penned by Justice Salome A. Montoya, concurred in by Justices Godardo A. Jacinto and Oswaldo D. Agcaoili; Rollo, pp. 40-51.

[22] Rollo, p. 18.

[23] Id., pp. 19-21.

[24] People v. Adoviso, G.R. Nos. 116196-97, 23 June 1999, citing People v. Penillos, G.R. No. 65673, 30 January 1992, 205 SCRA 546; People v. Loste, G.R. No. 94785, 1 July 1992, 210 SCRA 614.

[25] People v. Teloy, G.R. No. 128147, 12 May 1999, citing People v. Oliano, G.R. No. 119013, 6 March 1998, 287 SCRA 158.

[26] People v. Bermudez, G.R. No. 1229033, 25 June, 1999, citing People v. Bantisil, G.R. No. 116062, 249 SCRA 367.

[27] Rollo, p. 61.

[28] Id., p. 47.

[29] Id., p. 61.

[30] People v. Bibay, G.R. No. 118331, 3 May 1999, citing People v. Nialda, G.R. No. 115946, 24 April 1998, 289 SCRA 521.

[31] TSN, 8 November 1993, p. 14.

[32] People v. Bitoon, G.R. No. 112451, 28 June 1999, citing People v. Pallarco, G.R. No. 119971, 21 March 1998, 288 SCRA 151; People v. Pili, G.R. No. 124739, 15 April 1998, 289 SCRA 118; People v. De Guzman, G.R. Nos. 125180-81, 22 April 1998, 289 SCRA 470.

[33] TSN, 4 November 1993, p. 19.

[34] People v. Pama, G.R. Nos. 90297-98, 11 December 1992, 216 SCRA 385, citing People v. Talingdan, G.R. No. 94339, 9 November 1990, 191 SCRA 333.

[35] Ibid.

[36] Rollo, p. 50.

[37] TSN, 8 July 1993, p. 26.

[38] People v. Teloy, G.R. No. 128147, 12 May 1999.

[39] Records, p. 27.

[40] TSN, 4 November 1993, p. 10.

[41] People v. Agag, G.R. No. 64951, 29 June 1984, 130 SCRA 275; Orodio v. Court of Appeals, G.R. No. 57519, 13 September 1988, 165 SCRA 316; People v. Ariola, No. L-38457, 29 October 1980, 100 SCRA 523.

[42] People v. Claudio, G.R. No. 100880, 16 December 1992, 216 SCRA 647.

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