

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FEDERICO GENITA, JR. Y CULTURA, APPELLANT.

G.R. No. 126171. March 11, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Challenged in this appeal is the Decision[1] dated June 14, 1996 of the Regional Trial Court, Branch 4, Butuan City in Criminal Case No. 4954 finding Federico Genita, Jr., appellant herein, guilty beyond reasonable doubt of two counts of murder and sentencing him to suffer reclusion perpetua for each count.

Appellant was charged in an Information which reads:

“That on or about the evening of December 17, 1991 in Barangay Bugsukan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot with the use of a high powered firearm one Jesus Bascon thereby hitting him on both legs, and Reynaldo Timbal who was hit on his head which caused their subsequent death.”[2]

On arraignment, petitioner pleaded “not guilty.” Forthwith, trial ensued. The prosecution presented Danilo Timbal, Vicente Olaco and Dr. Elsie Caballero as its witnesses. Appellant took the witness stand for the defense.

The version of the prosecution is as follows:

On December 17, 1991, at around 8:00 o’clock in the evening, while the victims Reynaldo Timbal and Jesus Bascon were loading firewood in a truck in Barangay Bugsukan, Butuan City, appellant who was drunk and armed with an M-14 rifle, asked Reynaldo for a Christmas gift. Reynaldo told him to just come back because they were still loading firewood. Appellant left the place. Not long after, he returned and fired his gun at Jesus’ feet, hitting his left leg. He immediately jumped into the truck. Appellant then went near its bumper and fired at the tire near the chassis. Then he changed the magazine of his gun and fired again at Jesus, this time, hitting his right leg. Reynaldo ran away, his right hand covering his head. Appellant chased him and fired at him, hitting his nape and right hand. After the commotion, the victims’ co-workers who were able to take refuge from the cascade of bullets returned to the scene and found the dead body of Reynaldo. Jesus was immediately brought to the Butuan City General Hospital but died thereafter.[3]

Dr. Elsie Caballero, City Health Officer of Butuan City, who conducted the post mortem examination of the body of Reynaldo, found that he died of “shock, gunshot wound in the neck with avulsion of brain tissues.”[4] On the other hand, the Death Certificate[5] issued by Dr. Raul Monton, Medical Specialist II of the Butuan City General Hospital, attributed Jesus’ death to “compound fractures, (R) & (L) Legs, and Hypovolemic Shock.”

Appellant, relying on the exempting circumstance of accident as his defense, presented a different version. He testified that he was a member of the Civilian Armed Forces Geographical Unit (CAFGU) stationed at Bugsukan, Butuan City, hence, he was officially issued an M-14 rifle. On the evening of December 17, 1991, while on his

way to his camp, he saw a truck parked at the right side of the road with its rear lights on. While approaching the vehicle, somebody grasped his neck. As a consequence, he accidentally pulled the trigger of the M-14 rifle slung on his shoulder. The weapon automatically fired. At this instance, his assailant set him free. Immediately he rushed to the camp and reported the incident to Sgt. Montealto who placed the camp on alert. Appellant stayed in the camp during the entire evening. The following morning, he learned that two persons were killed.[6]

On June 14, 1996, the trial court rendered the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, finding accused FEDERICO GENITA, JR. y CULTURA guilty beyond reasonable doubt for the death of the two (2) victims:

(1) He is hereby sentenced to reclusion perpetua with its accessory penalties for the death of Reynaldo Timbal which penalty entails imprisonment for at least thirty (30) years.

(2) For the death of Jesus Bascon, the said accused, FEDERICO GENITA, JR. y CULTURA is also sentenced to another penalty of reclusion perpetua with its accessory penalties which penalty entails another imprisonment of at least thirty (30) years.

Both sentences shall be served by the accused successively at the Davao Prison and Penal Farm at Panabo, Davao del Norte.

Accused is also ordered to indemnify the Heirs of Reynaldo Timbal the sum of Fifty Thousand (P50,000.00) pesos and another Fifty Thousand (P50,000.00) pesos for the Heirs of Jesus Bascon plus costs of suit.

IT IS SO ORDERED.”[7]

Hence, this appeal anchored on the following assignments of error:

“I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EXEMPTING CIRCUMSTANCE OF ACCIDENT INTERPOSED BY THE ACCUSED-APPELLANT

“II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE FAILURE OF THE PROSECUTION TO PROVE ITS ATTENDANCE ON THE ASSUMPTION THAT THE KILLING OF THE VICTIM WAS NOT ACCIDENTAL.”[8]

Appellant contends that he was performing a lawful act with due care when the victims were killed. He was then on his way to the CAFGU station to report for duty. He had no intention to kill the victims. He accidentally pulled the trigger of the rifle and the bullets hit the victims. Thus, he should have been exempted from any criminal liability. Even assuming that he is liable for the death of the victims, he contends that the trial court erred in appreciating the qualifying circumstance of treachery.

The Solicitor General maintains that considering the number of gunshot wounds inflicted on the victims, the shooting could not have been an accident. Nonetheless, the Solicitor General agrees with appellant that the qualifying circumstance of treachery was not sufficiently proven, stressing that the latter was drunk when he approached Reynaldo. This should have put the victims on guard as it was established during the hearing that appellant tends to be cantankerous and out of control when he is drunk. Also, it was not proven that he consciously adopted the means of executing the crime.

Appellant’s version that he “accidentally shot” the two victims is incredible. Accident is an exempting circumstance under Article 12 of the Revised Penal Code. It must be stressed that in raising this defense, appellant

has the burden of the evidence and it was incumbent upon him to establish that he was exempt from criminal liability.[9] He must show with clear and convincing proofs that: 1) he was performing a lawful act with due care, 2) the injury caused was by a mere accident, and 3) he had no fault or intention of causing the injury. Considering appellant's evidence, it is clear that the requisites of accident as an exempting circumstance were not proven. First, appellant's manner of carrying his M-14 rifle negates his claim of "due care" in the performance of an act. Knowing that his rifle was automatic, he should have seen to it that its safety lock was intact. Worse, he admitted that his finger was constantly on the trigger. With the safety lock released and his finger on the trigger, how can we conclude that he acted with due care? We cannot accept his version that he was just following his trainer's instruction to release the safety lock while in a critical area.[10] For one, he never presented his trainer to corroborate his statement; and for another, he was not in a critical area. Second, the number of wounds sustained by the victims shows that the shooting was not merely accidental. Both victims sustained more than one wound. While it could have been possible that the first wound sustained by both victims was by accident, however, the subsequent wounds sustained by them in different parts of their bodies could not have been similarly inflicted. And third, appellant manifested an unmistakable intent to kill the victims when he reloaded his rifle after his first unsuccessful attempt to kill them. Jesus had already sought refuge by jumping into the truck when another bullet hit his right leg. Reynaldo was already running away when he was shot on his nape and right hand. That appellant chased the victims and shot them several times clearly show that he had the intent to kill them.[11] His defense must necessarily fail.

Moreover, if it were true that someone attacked appellant, thus causing him to accidentally pull the trigger of his rifle, then his natural reaction should have been to defend himself. Instead, he rushed towards the camp. Furthermore, he did not present any evidence to support his allegation that the CAFGU was placed on alert. And not a single witness corroborated his version of accidental shooting, an indication that it is fabricated.

The trial court found the testimonies of the prosecution witnesses credible. We stamp our agreement to such finding. Woven in the fabric of our jurisprudence is that the findings of the trial court are accorded not only the highest respect, but also finality, unless some weighty circumstance has been ignored or misunderstood but which could alter the result and could affect the judgment to be rendered. Given the direct opportunity to observe the witness on the stand, the trial judge was in a vantage position to assess the demeanor of the witnesses and determine if they were telling the truth or not.[12] Here, the trial court keenly observed:

"The defense counsel attempted to force into the mouth of the accused the answer counsel wanted accused to respond to his questions. During the direct examination, for instance, defense counsel propounded this question:

'Atty. Dagani:

Q

It appears from your testimony that while you were walking from your house to the camp, you seemed to be prepared for fight, do you agree with me on that?'

It is obvious that this leading question was propounded to explain why the finger of the accused was on the trigger of the weapon. The attempt of the defense counsel to elicit the desired answer was apparently to support the theory that the accused was on alert that evening with the safety lock of his rifle released.

Pitted against the clear, positive and impressive account narrated by the prosecution witnesses, the claim of accidental shooting is exposed of what it is – a farce, an invention of the imagination."

Furthermore, the trial court found that the prosecution witnesses were not motivated by any ill desire to implicate

appellant with a serious charge. The absence of motive on their part lends more credence to their testimonies.

However, we find that the trial court erred in finding that treachery exists in the commission of the crime. 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 especially to insure its execution, without risk to himself arising from the defense which the offended party might make. Thus, for the crime to be qualified by treachery the following elements must be proved: (1) the means of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[13] Treachery cannot be presumed but must be proved by clear and convincing evidence or as conclusively as the killing itself. Hence, where no particulars are shown as to the manner by which the aggression was commenced or how the act which resulted in the death of the victim began and developed, treachery can in no way be established from mere suppositions, drawn solely from circumstances prior to the killing.[14] In the instant case, it appears from the record that the attack was not so swift so as to render the victims off guarded. Contrary to the finding of the trial court, appellant could not have managed to “stealthily approach” and suddenly fire at the victims. Therefore the means in executing the crime cannot be considered deliberate. Besides, Jesus had the chance to jump into the truck after he was hit at the left leg. Reynaldo, on the other hand, was able to run away and take cover, though unsuccessful. As a matter of fact, the other laborers who were with the victims managed to evade the volley of bullets. It cannot be said, therefore, that the victims were unprepared to put up a defense.

Since the aggravating circumstance of treachery was not proven, appellant can only be convicted of two separate crimes of homicide punishable under Article 249 of the Revised Penal Code. The Solicitor General maintains that he should be convicted of double homicide, a complex crime punishable under Article 48 of the Revised Penal Code which provides:

ARTICLE 48. Penalty for complex crimes. – When a single act constituted two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The instant case does not fall under the above provision. The finding of the trial court tells why, thus:

“Let it be noted, though, that herein accused killed both deceased one after the other. As described by witness Danilo Timbal accused Genita first fired at Jesus Bascon who was in the truck. He then shot the front tire of the truck. After reloading, he went back to Bascon and shot him again. During this time Reynaldo Timbal was at the back of the truck. When Reynaldo Timbal ran away, accused fired at him hitting the deceased on the head and wounding the deceased’s right hand which covered his head while he was running. For each death, therefore, accused shall be held criminally liable.”

Appellant, therefore, must be convicted of two separate crimes of homicide.

The penalty for homicide is reclusion temporal. In view of the absence of the qualifying circumstance of treachery, appellant can only be convicted of homicide punishable by reclusion temporal.[15] There being neither mitigating nor aggravating circumstance that attended the commission of the crime, the imposable penalty is the medium period of reclusion temporal.[16] Applying the Indeterminate Sentence Law, appellant should be meted out the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum, as minimum, to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum.

With regard to civil liability, no proof was presented as to the actual or moral damages. The trial court, however, ordered appellant to indemnify the heirs of each of the victims the amount of P50,000.00, which we affirm. Unlike the award of actual damages, the award of civil indemnity need no proof other than the death of the victim.[17] In addition, temperate damages may be recovered under Article 2224 of the Civil Code, as it cannot

be denied that the heirs suffered some pecuniary loss although the exact amount was not proved with certainty. Hence, an award of P25,000.00 by way of temperate damages would be appropriate.[18] The heirs of Reynaldo and Jesus are awarded P50,000.00 each as civil indemnity and P25,000.00 as temperate damages.

WHEREFORE, the Decision of the trial court is MODIFIED in the sense that appellant is hereby found guilty beyond reasonable doubt of two crimes of homicide. He is sentenced to suffer (10) years and one (1) day of prision mayor maximum, as minimum, to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum, for each crime of homicide.

The appellant is ordered to pay the heirs of each of the victims, Reynaldo Timbal and Jesus Bascon, the amounts of P50,000.00 as civil indemnity for their deaths and P25,000.00 as temperate damages.

With costs de oficio.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] Penned by Judge Cipriano B. Alvizo, Jr.

[2] Records at 1.

[3] Transcript of Stenographic Notes (TSN), December 8, 1993 at 3-7; TSN, June 28, 1995 at 4-8.

[4] Records at 12, Necropsy report dated December 18, 1991; Exh. "A."

[5] Id., Exhibit "B".

[6] TSN, August 30, 1995 at 3-12.

[7] Record at 82-83.

[8] Rollo at 46.

[9] People vs. Janairo, G.R. No. 129254, July 22, 1999, 311 SCRA 58; People vs. Cariquez, G.R. No. 129304, September 27, 1999, 315 SCRA 247.

[10] TSN, August 30, 1995 at 18.

[11] People vs. Taylaran, G.R. No. L-49149, October 23, 1981, 108 SCRA 373.

[12] People vs. Valla, G.R. No. 111285, January 24, 2000, 323 SCRA 74; People vs. Fuensalida, G.R. No. 119963, November 6, 1997, 281 SCRA 452.

[13] People vs. Annibong, G.R. No. 139879, May 8, 2003.

[14] People vs. Cario, G.R. No. 123325, March 31, 1998, 288 SCRA 404.

[15] Article 249, Revised Penal Code.

[16] Article 64 (1), id.

[17] People vs. De la Cruz, G.R. No. 128362, January 16, 2001, 349 SCRA 124.

[18] People vs. Abrazaldo, G.R. No. 124392, February 7, 2003; People vs. Ronas, G.R. Nos. 128088 & 146639, January 31, 2001, 350 SCRA 663.

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