

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO HERRERA DE LEON, ACCUSED-APPELLANT.

G.R. No. 126287. April 16, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Makati, Branch 136, convicting Orlando Herrera de Leon of murder, and sentencing him to reclusion perpetua and to indemnify the heirs of the victim, Michael Oris, in the amount of P50,000.00 as moral damages.

On May 2, 1988, Assistant Fiscal Leodegario C. Quilatan of Rizal filed with the Regional Trial Court, Makati an Information charging Orlando Herrera de Leon with homicide, committed as follows:

"That on or about the 28[th] day of April, 1988, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without justifiable motive, did then and there willfully, unlawfully and feloniously shoot with a gun one Michael Oris, thereby inflicting upon the latter serious and mortal shot wounds which directly caused his death.

"CONTRARY TO LAW."[2]

After re-investigation, however, on March 27, 1989, the prosecution withdrew the Information for homicide and filed an amended Information charging accused Orlando de Leon with murder, committed as follows:

"That on or about the 28[th] day of April, 1988, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, by means of treachery with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said gun one Michael Oris y Rodriguez, thereby inflicting upon him serious and mortal gunshot wounds which directly caused the death of said Michael Oris y Rodriguez.

"CONTRARY TO LAW."[3]

On September 19, 1989, upon arraignment, accused de Leon pleaded not guilty.[4] Trial ensued.

On April 28, 1988, at 11:00 p.m., Arthur Alfahora, Deo Vergara, Gilbert Castro, Jess Hernandez, Archie Beticon and Michael Oris were walking along the ricefield near Don Jose Greencourt St., Gatchalian Subdivision, Parañaque, Metro Manila.[5] Suddenly, they heard gunshots fired in their direction. The shots originated approximately 60 meters from them. Arthur Alfahora saw accused de Leon standing outside the perimeter fence of the house of the mayor. Through the light of an electric post, Arthur saw accused de Leon, in white shirt and maong pants, firing at them.[6] Archie Beticon, in the moonlit night, saw accused de Leon holding a long firearm pointed at them.[7] Frightened, the boys started running away from the gunfire but Michael Oris, who was a little overweight, lagged behind the group. Moments later, Michael was hit. He fell to the ground. He cried out to his companions to help him but the other boys continued running and left the scene. Later, the other boys returned with Michael's father and they brought the injured Michael to the Olivares Hospital at Sucat Road. A few days

later, Michael died.

Dr. Danilo Gajardo of the PC Crime Laboratory conducted an autopsy on the cadaver of the deceased Michael Oris, and concluded that the deceased sustained two gunshot wounds and three abrasions.[8] He opined that the deceased was shot from behind, based on the point of entry and direction of the bullets.[9] The two gunshot wounds were fatal because vital organs were lacerated. He did not find the point of exit of the bullets, and the slugs were not recovered.

Rodolfo Oris, father of the deceased, testified that he brought his son to the hospital and incurred expenses for the medical treatment given to Michael.[10] Michael was confined for three days but died nonetheless. Michael was buried at the Manila Memorial Park, with expenses that were duly receipted. Rodolfo Oris presented receipts with amounts as follows: P30,483.00 for the hospital expenses, P8,500.00 for the funeral and P3,190.00 for the burial.[11] He stated that the entire family was shocked at the unexpected death of his son.

Accused Orlando de Leon denied committing the crime and invoked alibi.[12] He stated that he was a member of the Civil Security Unit of the Parañaque Municipal Government since 1986 to guard the Municipal Hall and the house of Municipal Mayor Wilfrido Ferrer, located at Don Jose Greencourt Road, near the Gatchalian Subdivision. When he guarded the house of the mayor, his shift started at 3:00 in the afternoon until 11:00 in the evening. He had two other companions in the shift: Rey de Leon and another one whose name he could not remember.

On April 28, 1988, he was relieved at 10:50 in the evening by policeman Teddy Papa and two other members of his security unit whose names he could not recall. After his shift, accused de Leon claimed that he walked with Rey de Leon five hundred (500) meters to the corner of Don Arcadio Santos Avenue and Gatchalian Avenue. Then, both of them took a passenger jeepney. Accused de Leon alighted at the corner of Sto. Nino and Aquino Avenue, while Rey de Leon continued his ride. Thereafter, accused de Leon took a tricycle to his residence at Col. de Leon St., Sto. Niño. He reached his house at 11:15 that night. His wife and his children were not at home. He slept that night up to 10:00 in the morning of the next day.

Accused-appellant denied shooting the victim with a long firearm. As a member of the security unit, he carried only a batuta made of yantok. He denied knowing Michael Oris, but claimed that he knew Michael's father, Rudy Oris. He never had any misunderstanding with Rudy Oris or any of the latter's family members.

Reynaldo de Leon, a rebuttal witness, alleged that he knew accused Orlando de Leon because they were both security personnel detailed to guard the house of Mayor Wilfrido Ferrer. On April 28, 1988, his shift was from 7 in the morning till 3 in the afternoon. He carried a firearm, an M16, which he turned over to the reliever or to the next guard. He denied accused de Leon's testimony that they left their place of work together on the evening of April 28, 1988. He also denied riding in the same jeepney with accused de Leon that day.[13] Teddy Papa, a policeman, also testified that he knew accused de Leon because he was also part of the civil security assigned to guard the house of the mayor. His shift lasted from 11 in the evening until 7 in the morning. On April 28, 1988, he saw accused de Leon before 11:00 in the evening armed with an M16 rifle at the barracks located behind the house of the mayor.[14] On January 31, 1996, the trial court rendered a decision, the dispositive portion of which states:

"WHEREFORE, and in consideration of all the foregoing, the Court finds the accused, Orlando de Leon, GUILTY beyond reasonable doubt of the crime of Murder, and it hereby sentences him to suffer an imprisonment of Reclusion Perpetua, and to pay the heirs of the victim, Michael Oris, the amount of P50,000.00 by way of moral damages, without any subsidiary imprisonment in case of insolvency.

"SO ORDERED.

"Makati City, January 31, 1996.

"(Sgd.)

"JOSE R. BAUTISTA

"Presiding Judge"[15]

Hence, this appeal.[16] Accused-appellant alleges that the trial court, in convicting him of murder, merely considered the weakness of his defense rather than the strength of the prosecution evidence.

We disagree. The trial court cited the testimony of the eyewitnesses to the crime as well as rebuttal witnesses who established accused-appellant's presence at the scene of the crime. Two eyewitnesses saw accused-appellant holding a long firearm and shooting at them. Aside from the Meralco electric light post that provided adequate lighting that night, there was moonlight illuminating the area where accused-appellant stood, allowing the eyewitnesses to see his face. The two boys even noticed what the accused-appellant wore on the night in question, which statements were not disputed by the defense. The natural reaction of victims of criminal violence is to strive to notice the appearance of their assailants and observe the manner the crime was committed.[17] Moreover, the prosecution eyewitnesses did not have any motive to implicate accused-appellant in a serious crime like murder. Where there is no evidence that the principal witnesses of the prosecution were actuated by ill-motive, it is presumed that they were not so actuated and their testimony was entitled to full faith and credit.[18] Furthermore, the testimonies of the eyewitnesses were corroborated by the findings of the medical expert that the victim was shot from behind.

Accused-appellant pointed out, however, that it was not possible for him to have shot anybody because he was not issued a firearm in guarding the perimeter fence of the mayor's house. He merely used a nightstick made of yantok or rattan. However, this contention was belied by the testimony of two witnesses who also worked with accused-appellant as part of the civil security of the mayor. They stated that they carried an M16 rifle during their shift which they turned over to the guard of the next shift.

On the other hand, accused-appellant's defense consisted of alibi. For alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and it was physically impossible for him to have been at the scene of the crime.[19] In this case, accused-appellant alleged that he went home when the killing occurred. However, no other witness could support his alibi for his family was not at home and the other person who could attest to the time he went home was his co-worker, Rey de Leon. Unfortunately, Rey de Leon, whom accused-appellant claimed he rode with going home, categorically denied doing so. Noteworthy too is the fact that accused-appellant's house appeared to be a few minutes' ride from his place of work, thus rendering his presence at the scene of the crime physically possible. An unsubstantiated alibi cannot overcome positive and credible evidence pointing to accused as the perpetrator of the crime.[20] From the foregoing evidence, it was clearly established beyond reasonable doubt that accused-appellant was responsible for the killing of Michael Oris on April 28, 1988.

The question is whether the crime committed by accused-appellant was murder or homicide. Accused-appellant insists that the trial court erred in convicting him of murder, in the absence of any qualifying circumstances. Indeed a look at the trial court decision reveals that the trial court judge failed to explain why the offense was qualified to murder. Although the information explicitly alleged that the crime was committed with treachery and evident premeditation, the trial court in its decision was silent about the presence or absence of these qualifying circumstances. The trial court failed to specifically discuss the qualifying circumstances or any other modifying circumstance in the body or in the dispositive portion of the decision. Such a decision does not conform to the requirement of the Rules of Court that a judgment of conviction shall "state the legal qualifications of the offense

constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any." [21] Nevertheless, such lapse is not fatal to the validity of the decision. [22] An appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to correct any error as may be found in the appealed judgment, whether it is made the subject of assignment of errors or not. [23] Thus, we can review the evidence on record to evaluate if there is sufficient basis for convicting accused-appellant of murder or of homicide.

The essence of treachery is the swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. [24] Treachery is appreciated when the following conditions are present: 1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and 2) the means of execution be deliberately and consciously adopted. [25] In this case, the victim was peacefully walking along the ricefield with his friends, when accused-appellant, with the use of a long firearm and without warning, fired upon the unarmed teenagers giving the latter no opportunity to repel the aggression or defend themselves. Thus, the manner in which the victim was killed showed the presence of treachery in the commission of the crime.

With respect to evident premeditation, we find this circumstance lacking in this case. For evident premeditation to be appreciated as an aggravating circumstance, there must be proof, as clear as the evidence of the crime itself, of the following elements: 1) the time when the offender determined to commit the crime; 2) an overt act manifestly indicating that he clung to his determination; and 3) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. [26] Neither the record nor the appealed decision mentions the existence of the foregoing essential elements for a positive finding of evident premeditation. When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. [27] Considering that treachery qualified the crime, accused-appellant is guilty of murder.

At the time the crime was committed on April 28, 1988, the penalty prescribed for murder was reclusion temporal in its maximum period to death. [28] In the absence of any mitigating or aggravating circumstances, the penalty shall be imposed in its medium period, which is reclusion perpetua. [29] Regarding the award of damages, we note that the lower court only awarded fifty thousand pesos (P50,000.00) as moral damages. We have uniformly awarded the amount of fifty thousand pesos (P50,000.00) as civil indemnity, without need of further proof other than the fact of death as a result of the crime and proof of accused-appellants' responsibility therefor. [30] The amount of forty two thousand one hundred seventy three (P42,173.00) pesos shall be awarded as actual damages for the actual expenses incurred by the family of the deceased as evidenced by receipts.

WHEREFORE, the Court hereby AFFIRMS with MODIFICATION the decision of the Regional Trial Court, Makati, Branch 136, in Criminal Case No. 88-1631, convicting accused-appellant Orlando Herrera de Leon of murder and sentencing him to reclusion perpetua. The Court orders accused-appellant to pay the heirs of the victim the amount of fifty thousand (P50,000.00) pesos as moral damages, fifty thousand (P50,000.00) pesos as civil indemnity and forty-two thousand one hundred seventy-three (P42,173.00) pesos as actual damages.

Costs against accused-appellant.

SO ORDERED.

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

[1] In Criminal Case No. 88-1631, Judge Jose R. Bautista, presiding.

- [2] RTC Record, p. 1.
- [3] Amended Information dated March 27, 1989, RTC Record, p. 37.
- [4] Certificate of Arraignment, RTC Record, p. 51.
- [5] TSN, November 10, 1989, pp. 3-31.
- [6] TSN, August 24, 1992, pp. 28-31.
- [7] TSN, December 14, 1989, pp. 9-13.
- [8] Medico-legal Report, RTC Record, pp. 376-377.
- [9] TSN, August 13, 1990, pp. 3-20.
- [10] TSN, August 30, 1990, pp. 2-7.
- [11] Exhibit "F", dated May 3, 1988, issued by the Olivarez General Hospital, RTC Record, p. 379; Exhibit "G", dated May 4, 1988, issued by Holy Trinity Chapels, RTC Record, p. 380; Exhibit "H", dated May 4, 1988, issued by Manila Memorial Park, RTC Record, p. 381.
- [12] TSN, October 11, 1990, pp. 3-37.
- [13] TSN, March 2, 1993, pp. 2-5.
- [14] TSN, March 2, 1993, pp. 6-7.
- [15] Decision, RTC Record, pp. 715-739, at p. 739.
- [16] Notice of Appeal dated March 1, 1996, Rollo, p. 63.
- [17] *People v. Lopez*, 312 SCRA 684, 695 (1999).
- [18] *People v. Lumacang*, 324 SCRA 254, 267 (2000); *People v. Manegdeg*, 316 SCRA 689, 707 (1999).
- [19] *People v. Suelto*, 325 SCRA 41, 53 (2000); *People v. Tumaru*, 319 SCRA 515, 528 (1999), citing *People v. Baniel*, 275 SCRA 472, 483 (1998); *People v. Nialda*, 289 SCRA 521, 532 (1998).
- [20] *People v. Reduca*, 301 SCRA 516, 535 (1999); *People v. Guarin*, 317 SCRA 234, 242 (1999).
- [21] Rule 120, Section 2, 1985 Rules of Criminal Procedure.
- [22] *People v. Valerio*, 197 Phil. 882, 908 (1982).
- [23] *People v. Calayca*, 301 SCRA 192, 206 (1999); *People v. Pineda*, 311 SCRA 368, 376 (1999).
- [24] *People v. Lumacang*, 324 SCRA 254, 267-268 (2000); *People v. Manegdeg*, 316 SCRA 689, 709 (1999); *People v. Ronato*, 316 SCRA 433, 441-442 (1999).
- [25] *People v. Molina*, 312 SCRA 130, 136 (1999).
- [26] *People v. Barellano*, 319 SCRA 567, 589 (1999).
- [27] *People v. Enolva*, 323 SCRA 295, 310-311 (2000).
- [28] Article 248, Revised Penal Code.
- [29] Article 64(1), Revised Penal Code; *People v. Sanchez*, 308 SCRA 264, 286 (1999).

[30] People v. Barona, 323 SCRA 239, 247 (2000).

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