

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO R. PASCUAL, ACCUSED-APPELLANT.*G.R. No. 127761. April 28, 2000*

Ponente: DE LEON, JR., J.

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Before us on appeal is the Decision[1] of the Regional Trial Court of Roxas, Isabela, Branch 23, finding appellant Pedro Pascual y Reboca guilty of the crime of murder, in Criminal Case No. Br. 23-636, for the killing of Dr. Maximino P. Picio, Jr.

The appellant, Pedro R. Pascual, and a certain John Doe were charged with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, in an amended Information dated July 13, 1995, which reads:

That on or about the 14th day of March, 1995, in the municipality of San Manuel, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, together with John Doe, whose real identity is still to be determined, conspiring, confederating together and helping one another, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously, with intent to kill, suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot for several times with short firearms one Dr. Maximino P. Picio, Jr., who as a result thereof, suffered multiple gunshot wounds on the different parts of his body which directly caused his death.

CONTRARY TO LAW.[2]

Upon being arraigned on July 13, 1995, appellant Pedro Pascual, assisted by his counsel, entered the plea of "Not guilty". Thereafter, trial on the merits ensued.

The evidence adduced by the prosecution shows that the victim, Dr. Maximino Picio, Jr., was the Municipal Health Officer of San Manuel, Isabela. On March 14, 1995 at around 7:00 o'clock in the evening, Dr. Picio went to the house of Marissa Robles who served as a midwife in the Rural Health Unit of San Manuel from January 26, 1994 until her services were terminated on August 5, 1994 by Municipal Mayor Reynaldo P. Abesamis of San Manuel, Isabela. While at the house of Marissa, Dr. Picio discussed with her certain matters concerning the Rural Health Unit of San Manuel.[3]

At around 9:00 o'clock in the evening, Dr. Picio decided to go home. He was accompanied by Marissa outside the house where his motor vehicle was parked at the roadside. After boarding his vehicle, and while he was about to leave, two (2) unidentified persons who were armed with short firearms suddenly appeared and walked toward Dr. Picio and Marissa. Alarmed, Marissa called the attention of the unsuspecting Dr. Picio that the "enemies" were coming ("May dumarating na kalaban").[4] One of the unidentified men shoved Marissa and at the same time told her to get out of the way.[5] Immediately thereafter, the two unidentified men started firing their guns at Dr. Picio even as the latter pleaded to them in Ilocano not to shoot for the reason that they were friends ("Saan

kayo agkaskasta, agkakadua tayo.") Apparently determined to kill their victim, the assailants pulled Dr. Picio out of his vehicle and continued to shoot him several times as he laid helpless on the ground. The two assailants left only after the victim was already dead.[6]

Prosecution eyewitness Marissa Robles recognized the assailants due to the electric light in front of the house generated by the Isabela Electric Company (ISELCO) and the light emanating from the headlights of the vehicle of Dr. Picio. There was also a moon that evening when the shooting incident happened.[7] Upon the arrest of appellant Pedro Pascual on the following day, March 15, 1995, Marissa pointed to him as one of the two assailants[8] whom she described as small, with white complexion and sporting a brushed-up hair. She also described the other assailant as tall, dark and slender.[9]

The said prosecution eyewitness disclosed that she had seen the appellant about one (1) week prior to the shooting incident in the Rural Health Unit of San Manuel, Isabela when the appellant arrived in the morning and stayed there briefly before he left the place.[10]

Dr. Bernardo Layugan, Municipal Health Officer of Roxas, Isabela conducted the post mortem examination on the body of the victim on March 16, 1995. His findings as to the cause of death of the victim are contained in the Post Mortem Certificate of Death,[11] to wit: 1. Gunshot wound inlet left upper lip; 2. Gunshot wound inlet chin; 3. Gunshot wound anterior sternal portion; 4. Gunshot wound inlet right armpit; and 5. Gunshot wound anterior abdominal portion.

Rosalinda S. Picio, wife of the late Dr. Maximino Picio, Jr., testified on the civil aspect of the case. She stated that they spent around P 300,000.00 for the wake and funeral service. She also declared that her late husband used to receive a monthly salary of P13,000.00 as municipal health officer in addition to the P 240,000.00 annual income he used to earn in his farming and grains business.[12]

On the other hand, appellant Pedro Pascual denied that he killed Dr. Maximino Picio, Jr. Appellant Pascual testified that he was released on recognizance from the provincial jail of Isabela on March 3, 1995 after being detained there for almost three (3) years as a suspect in an ambush that took place sometime in 1990 and for his past activities as a former member of the New Peoples Army (NPA). On March 8, 1994, his services as carpenter were hired by his kumpadre, Fernando Agaloos, in the construction of the house of a certain Napoleon Velasco. He worked in the construction until he was arrested by the police on March 15, 1995 in connection with the killing of Dr. Maximino Picio, Jr.[13]

Appellant Pascual claimed that he stayed in his house in Barangay Eden, San Manuel, Isabela during the entire evening of March 14, 1995. At around 7:00 o'clock in the evening of the said date his neighbors, Guillermo Velasco and Santiago Casticon, arrived in his house. Shortly thereafter, another neighbor, Elmer Velasco, also arrived. Among other matters, they talked about his life as a detention prisoner in the provincial jail. After his visitors had left at past 10:00 o'clock in the evening, Pascual went to sleep.[14]

On the following morning of March 15, 1995, appellant Pascual reported for work in the construction site of the house of Napoleon Velasco. However, he failed to return in the afternoon of the same date inasmuch as he was arrested by the police when he returned to his house from work to take his lunch.

Upon his arrest, appellant Pedro Pascual was immediately brought by Police Senior Inspector Dionisio Borromeo to the PNP Crime Laboratory Service in Santiago City, Isabela for paraffin examination to determine the presence of gunpowder residue (nitrates) on the hands of the appellant. Boiled wax was poured on his hands.[15] The result of the paraffin examination however, did not show the presence of any gunpowder residue on the hands of the appellant.[16]

The appellant denied that he knew Dr. Maximino Picio, Jr. as the Rural Health Officer of San Manuel, Isabela. He also denied having gone to the Rural Health Unit of San Manuel, Isabela one (1) week before Dr. Picio was killed.

Defense witnesses Elmer Velasco, Guillermo Velasco and Santiago Casticon corroborated the testimony of appellant Pedro Pascual. The said defense witnesses respectively testified, in substance, that they were in the house of appellant Pascual between 7:00 o'clock to 10:00 o'clock in the evening of March 14, 1995 to welcome him who had been away from their barangay for almost three (3) years; and that they talked about the life of the appellant as a detention prisoner in the Isabela provincial jail. They claimed that the appellant did not leave his house where they all stayed that evening.[17]

After analyzing the evidence, the trial court rendered its Decision the dispositive portion of which reads, to wit:

AS A CONSEQUENCE OF ALL THE FOREGOING, the Court finds accused Pedro Pascual guilty beyond reasonable doubt of the crime of murder provided for and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim the sum of P 300,000.00, the amount spent for the coffin, wake and burial of the victim, P 50,000.00 for life, without however subsidiary imprisonment in case of insolvency, and to pay the cost.

Considering that the other accused has not been apprehended, let this case be archived to be revived upon apprehension of said accused and/or upon motion of the public prosecutor.

SO ORDERED.[18]

In his appeal, appellant Pedro Pascual interposed the following assignments of error:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNCORROBORATED TESTIMONY OF MARISSA ROBLES THAT SHE SAW THE COMMISSION OF THE CRIME AND RECOGNIZED THE ACCUSED-APPELLANT AS ONE OF THE KILLERS OF DR. MAXIMINO PICIO, JR.

II

THE TRIAL COURT ERRED IN REJECTING THE TESTIMONIES OF THE ACCUSED-APPELLANT AND WITNESSES ELMER VELASCO, GUILLERMO VELASCO AND SANTIAGO CASTICON ON THE GROUND THAT THEIR TESTIMONIES ARE "TOO GOOD TO BE TRUE".

III

THE TRIAL COURT ERRED IN NOT GIVING ANY EVIDENTIARY VALUE TO THE RESULTS OF THE PARAFFIN TEST ON ACCUSED-APPELLANT.

IV

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT WAS ONE OF THE KILLERS OF THE VICTIM.[19]

Appellant Pedro Pascual expressed grave doubt over the presence of Marissa Robles at the scene of the crime. He stated that Marissa, who is a young and single lady from the barrio, should have had enough time talking with the late Dr. Maximino Picio, Jr. for two (2) hours and so it was not necessary for her to still accompany him outside her house at such an unholy hour in the evening. Appellant also stated that if Marissa were indeed present at the crime scene, then she could have been hit by bullets or she could have even been killed by the assailants knowing that she was a potential witness against them.

The appellant further stated that even on the assumption that Marissa was beside the victim at the time the shooting incident occurred, her uncorroborated identification of the appellant allegedly because the scene of the crime was well-lighted is unreliable; and that the suddenness of the attack could not have afforded her the time,

calmness and presence of mind to recognize the assailants.

Moreover, appellant Pascual opines that it was unlikely for prosecution witness Marissa Robles to have been at the Rural Health Unit of San Manuel, Isabela and saw him one (1) week prior to the shooting incident on March 14, 1995 inasmuch as she had been separated from the service as early as August 5, 1994; and that Marissa failed to disclose the purpose of her alleged visit therein and to explain how and why she had particularly noticed and recognized him.

In addition, the appellant pointed out that the paraffin test conducted on his hands at the PNP in Santiago City yielded negative results. According to him while gunpowder traces or nitrates can be removed by acetic acid or the ordinary vinegar, there was no showing that he knew of such fact, and that he used vinegar to remove gunpowder traces from his hands.

Article 248 of the Revised Penal Code, as amended, provides:

Article 248. Murder.- Any person who not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

After a careful review of the record, we find that the decision of the trial court finding the appellant guilty of the crime of murder is amply supported by the evidence. That the victim, Dr. Maximino Picio, Jr., died of multiple gunshot wounds in the evening of March 14, 1995 in front of the house of Marissa Robles in Barangay Villanueva, San Manuel, Isabela is not disputed. Appellant Pedro Pascual claimed that the lower court erred in giving credence to the uncorroborated testimony of prosecution eyewitness Marissa Robles while rejecting his alibi which was corroborated by his neighbors, namely: Elmer Velasco, Guillermo Velasco and Santiago Casticon. It should be emphasized however, that credibility does not go with numbers.[20] The testimony of a single witness is sufficient to support a conviction even in a charge of murder where it is positive and credible.[21]

The participation of appellant Pedro Pascual in the killing of Dr. Maximino Picio, Jr. was duly established by the testimony of prosecution eyewitness Marissa Robles. During the trial Marissa positively identified and pinpointed appellant Pascual, whom she earlier described to the police authorities as small, with white complexion and sporting a brushed-up hair, as one of the two assailants of Dr. Picio. Marissa testified that she had spotted the appellant and his companion who were both carrying short firearms while they were walking toward Dr. Picio, prompting her to warn him of the approaching enemies ("May dumarating na kalaban"). Appellant Pedro Pascual

even ordered Marissa to get out of the way as the latter was directly beside Dr. Picio who was then about to leave. Dr. Picio pleaded to the assailants not to shoot him inasmuch as they were friends, but to no avail. She had actually witnessed the shooting of the victim as well as recognized the two assailants due to the electric lights in front of her house being generated by the ISELCO and the illumination from the headlights of the victim's vehicle which were already switched on. In addition, there was a moon on that evening when the shooting incident happened.

The testimony of Marissa was found by the lower court to be more credible, straightforward and worthy of belief.[22] On the other hand, appellant did not present proof to show that she was biased. There is also no evidence from which it can be inferred that the said prosecution eyewitness was motivated by any ill-will in testifying against him. If at all, the arguments advanced by the appellant in his attempt to cast doubt on the credibility of the said prosecution eyewitness are based mainly on conjectures that cannot prevail over the positive identification by the said eyewitness that the appellant was one of the two perpetrators of the crime.

It is not difficult to imagine why Marissa remained unscathed during the shooting incident. The facts clearly show that she was not the object of the criminal act. That Marissa's services in the Rural Health Unit of San Manuel, Isabela had been severed as early as August 5, 1994 does not run counter to her claim that she saw the appellant one (1) week before Dr. Picio was killed on March 14, 1995. The records of this case disclose that Marissa continued to visit Dr. Picio at the Rural Health Center in San Manuel, Isabela despite her severance from the service; a fact which prompted Mayor Reynaldo P. Abesamis, M.D., Municipal Mayor of San Manuel, Isabela, to issue a written order dated February 23, 1995 addressed to Dr. Maximino Picio, Jr. to bar Marissa Robles from the said office, otherwise he "will be constrained to institute drastic action." [23] In any case, it is a settled rule that the Supreme Court will not interfere with the findings and judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[24]

Besides, appellant failed to show that it was physically impossible for him to be present at the place where the crime was committed at the time of commission thereof.[25] Pascual claims that he was in his house in Barangay Eden, San Manuel, Isabela when the killing of Dr. Picio in Barangay Villanueva, San Manuel, Isabela took place. It should be noted that the distance between the two barangays is only about three (3) kilometers. They are connected by an irrigation road that can easily be negotiated by a motorized vehicle or even on foot.[26] Consequently, the defense of alibi by the appellant must fail.

Appellant Pascual likewise faults the trial court for not according evidentiary weight to the result of the paraffin test per the Report issued by the police crime laboratory in Santiago City, Isabela that shows appellant negative of any gunpowder residue (nitrates) on both his hands. It is a well-settled rule that a negative paraffin test result is not a conclusive proof that one has not fired a gun, because it is possible for a person to fire a gun and yet bear no traces of nitrates or gunpowder, as when the hands are bathed in perspiration or washed afterwards.[27] Additionally, defense witness Leonora Camurao, forensic chemist at the PNP Crime Laboratory, Camp Adduru, Tuguegarao, Cagayan specifically stated that gunpowder or nitrates can be removed with the use of acetic acid or vinegar.[28]

The lower court correctly found that treachery attended the shooting to death of the victim. The requisites for appreciating treachery (alevosia) in the commission of the crime of murder are: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) appellant consciously and deliberately adopted the particular means, methods or forms of the attack employed by him.[29] From the eyewitness account of Marissa Robles, appellant Pascual and his companion who were both armed with short firearms approached Dr. Picio when the latter was inside his vehicle and about to leave. Dr. Picio became aware of their presence only after he

was warned by Marissa. Immediately thereafter, appellant and his companion shot Dr. Picio several times despite his plea to spare his life.

It appears clear that the assailants purposely sought the opportunity so that their unarmed victim was not in a position to defend himself when they simultaneously shot him to death several times. The fact that Marissa called the attention of Dr. Picio upon noticing the approaching assailants did not negate the finding of treachery for the reason that treachery may still be appreciated even when the victim was forewarned of the danger to his person.[30] The essence of treachery is the suddenness and unexpectedness of the assault without the slightest provocation on the part of the person attacked.[31]

The qualifying circumstance of evident premeditation, however, does not obtain in the case at bench. The elements of evident premeditation are: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[32] The evidence adduced by the prosecution does not prove any of the said elements.

The lower court correctly imposed the penalty of reclusion perpetua on the appellant in view of the absence of any aggravating and mitigating circumstance.

In view of the death of the victim, Dr. Maximino P. Picio, Jr., his forced heirs are entitled to P50,000.00 representing civil indemnity ex delicto. They are also entitled to P50,000.00 by way of moral damages inasmuch as the widow of the victim, Rosalinda S. Picio, testified on how she felt over the loss of her husband.[33] Additionally, the appellant is liable to pay to the heirs of the victim damages for loss of earning capacity of the deceased. However, actual damages may not be awarded in view of the absence of competent evidence to support the same.

It appears that Dr. Maximino Picio, Jr. was 64[34] years old at the time of his death on March 14, 1995. Her widow testified that he used to receive a monthly salary of P13,000.00 as Municipal Health Officer of San Manuel, Isabela. In accordance with the American Expectancy Table of Mortality which was adopted by the Court,[35] the loss of earning capacity shall be computed as follows:

$$\begin{aligned}\text{Net Earning Capacity (X)} &= \text{Life Expectancy} \times (\text{Gross Annual Income} - \text{Living Expenses e.g. 50\% of annual gross income}) \\ &= 2 (80-64) \times (156,000.00-78,000.00) \\ &3 \\ &= 10.667 \times 78,000.00 \\ &= \text{P } 832,026.00\end{aligned}$$

WHEREFORE, the Decision of the Regional Trial Court of Roxas, Isabela, Branch 23, convicting appellant Pedro R. Pascual of the crime of murder and imposing the penalty of reclusion perpetua is hereby **AFFIRMED** subject to the **MODIFICATION** that the civil liability of the appellant in favor of the forced heirs of the victim shall be as follows: P50,000.00 representing civil indemnity ex delicto; P50,000.00 by way of moral damages; and P832,026.00 as damages for the loss of earning capacity of the deceased victim, Dr. Maximino P. Picio, Jr.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

- [1] Penned by Judge Wilfredo Tumaliuan. Rollo, pp. 139-153.
- [2] Original record, p. 60.
- [3] TSN dated August 24, 1995, pp. 14-15.
- [4] TSN dated August 23, 1995, p. 7.
- [5] TSN dated March 16, 1996, p. 8. Original record, p. 17.
- [6] TSN dated August 23, 1995, pp. 7-9.
- [7] TSN dated August 24, 1995, pp. 6-7.
- [8] Exhibit "A".
- [9] TSN dated August 23, 1995, p. 5.
- [10] TSN dated August 24, 1995, pp. 9-12.
- [11] Exhibit "B".
- [12] TSN dated August 24, 1995, pp. 22 and 24-25.
- [13] TSN dated March 12, 1996, pp. 4-6.
- [14] TSN dated March 12, 1996, pp. 11-13.
- [15] TSN dated March 12, 1996, pp. 7-9.
- [16] Exhibit "3".
- [17] TSN dated November 27, 1995; TSN dated December 6, 1995.
- [18] Rollo, p. 35.
- [19] Rollo, p. 65.
- [20] *People vs. Pahayahay*, 279 SCRA 567, 577-578 (1997).
- [21] *People vs. Asoy*, 251 SCRA 682, 688 (1995); *People vs. Salcedo*, 273 SCRA 473, 495 (1997)
- [22] Rollo, p. 29.
- [23] Rollo, p. 37.
- [24] *People vs. Lagrosa*, 230 SCRA 298, 305 (1994).
- [25] *People vs. Apa-ap, Jr.*, 235 SCRA 468, 474 (1994).
- [26] TSN dated August 24, 1995, p. 6.
- [27] *People vs. Pagal*, 272 SCRA 443, 449 (1997); *People vs. Abrera*, 283 SCRA 1, 15 (1997).
- [28] TSN dated April 23, 1996, p. 13.
- [29] *People vs. Reyes*, 287 SCRA 229, 238 (1998).
- [30] *People vs. Timblor*, 285 SCRA 64, 77 (1998).
- [31] *People vs. Sumalpong*, 284 SCRA 464, 483 (1998).
- [32] *People vs. Castillo*, 289 SCRA 213, 228 (1998).
- [33] TSN dated August 24, 1995, pp. 23-24.
- [34] Exhibit "B".
- [35] *People vs. Verde*, G.R. No. 119077, February 10, 1999.

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