

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR CAWAYAN Y CRUZ, ACCUSED-APPELLANT.

G.R. No. 128117. February 28, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Cebu City, Branch 14, finding accused Edgar Cawayan y Cruz guilty beyond reasonable doubt of murder and sentencing him to reclusion perpetua and to pay the heirs of the offended party the sum P50,000.00 (Fifty Thousand Pesos).[1]

The facts are as follows:

On February 28, 1996 around 9:00 in the evening, accused, together with friends Maricris Villan, Vilma Barrientos and Ram Florita, was in the house of Cristopher Carreon, situated in Cabantan Street, Cebu City. They were drinking beer, with accused acting as the glass-tender. Except for accused and Ram, the group was playing the local card game "tsiketsa." After downing several bottles of beer, accused, without a word, stood up and left. The group continued to play cards up to the wee hours of the next day.

Around 12:30 in the morning, accused returned. He went straight towards the group still playing "tsiketsa." To Maricris and Vilma's surprise, they saw him sternly looking at Christopher Carreon, and before any one could utter a word he levelled his gun towards Christopher who was lying on the floor face down and shot him at the back. As Christopher rolled bloodied on the floor, he pleaded to accused to spare him but to no avail. When he tried to stand up, accused uttered, "ganina na ko naglagot nimo (why should I not do it? I have been angry with you for a time) and shot him again on the stomach. Accused, upon seeing Christopher slowly dying, ran away.

Post-mortem examination on Christopher's cadaver disclosed that he sustained two gunshot wounds, one at the back and one at the thoracic region. The cause of death was shock secondary to gunshot wound on the thoracic area, posterior aspect.

On the basis of the joint affidavit executed by witnesses Maricris Villan and Vilma Barrientos, on February 29, 1996, Virginia F. Santiago Prosecutor II, filed an Information for murder with the Regional Trial court, Cebu City, as follows:

"The undersigned Asst. Prosecutor of the City of Cebu accuses Edgar Cawayan y Cruz of the crime of Murder, committed as follows:

"That on or about the 28[th] day of February, 1996, at about 12:30 dawn, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a revolver, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Christopher Carreon with the revolver hitting the latter upon vital parts of his body and inflicting upon him the following physical injuries, causing:

"SHOCK SECONDARY TO GUNSHOT WOUNDS THORAXIC AREA, POSTERIOR ASPECT."

"and as a consequence of said injuries, Christopher Carreon died few minutes later.

"CONTRARY TO LAW.

"Cebu City, Philippines, February 29, 1996.

BAIL RECOMMENDED: Non-bailable.

"(SGD.) VIRGINIA P. SANTIAGO

"Prosecutor II"

"APPROVED

"(SGD.) JUFELINITO R. PAREJA-NPSS - III

"City Prosecutor." [2]

Arraigned on March 27, 1996, accused pleaded not guilty. On June 24, 1996, accused filed a motion for compulsory submission to treatment and rehabilitation pursuant to Section 31 of Republic Act 6425 or the Dangerous Drugs Act, stating that he is a drug dependent and in fact a prosecution witness admitted that the accused was a drug dependent. [3] On June 24, 1996, the trial court denied the motion, stating thus:

"It is easy to see that under the first paragraph of the afore-quoted section, it is only when a person charged with an offense is found by the fiscal or the court, at any stage of the proceedings, to be a drug dependent, that the fiscal or the court as the case may be, shall suspend further proceedings and transmit the record of the case to the board. In the instant case, neither the fiscal nor the Court has found that the accused is a drug dependent." [4]

Hence, trial ensued. On October 31, 1996, the trial court rendered a judgment the dispositive portion of which reads:

"WHEREFORE, premises considered, the accused Edgar Cawayan y Cruz is hereby found guilty beyond reasonable doubt of the felony of murder, attended by the generic aggravating circumstance that the crime was committed in the dwelling of the offended party (morada), but offset by the alternative mitigating circumstance of intoxication. Accordingly, the accused is hereby sentenced to the penalty of Reclusion Perpetua, and to pay the heirs of the offended party the sum of P50,000.00, in conformity with the current jurisprudential guideposts.

"Costs against accused.

"SO ORDERED." [5]

Hence, this appeal. [6]

Accused-appellant raises a lone assignment of error that the trial court erred in convicting him of the crime charged by rejecting the defense of alibi and denial put up by him. [7]

Accused-appellant Edgar Cawayan submits that the trial court simply brushed aside his defense of alibi and denial duly corroborated by other defense witnesses, branding the same as lame and implausible in the face of the firm and affirmative testimonies of two women prosecution witnesses who identified and pointed to the accused as the author of the slaying of deceased Christopher Carreon. [8]

According to accused-appellant, while it may be true that as between the defense of alibi and positive identification by eyewitnesses, the latter deserves greater credence, there are situations where it is unavoidable simply because it is really the truth, no more no less.

It is thus imperative that we scrutinize the evidence presented by the prosecution which served as the basis for the conviction of the accused.

The prosecution presented two eyewitnesses in the person of Vilma Barrientos and Maricris Vilan, who both testified that they saw accused-appellant shoot the victim twice.

The testimony of Maricris Vilan was the same with that of Vilma Barrientos, saying that it was accused-appellant Edgar Cawayan who shot Christopher Carreon.[9]

The prosecution also presented the medico legal expert who conducted an autopsy on the body of the deceased Christopher Carreon. The post mortem findings of Dr. Jesus P. Cerna, M.D. reveal the following:

"Gunshot wounds:

- Entrance, ovaloid, 1.0 x 0.8 cm., with abrasion collar widest infere-laterally by 0.6 cm. edges inverted, back, right scapular area, 7.0 cm. from the posterior median line and 125 cm. above right heel; forward, upward and medially, involving the skin and the underlying soft tissues, fracturing the 2nd and 1st cervical vertebra, (bullet imbedded deep at the base of the skull not recovered).

- Entrance, ovaloid, 1.0 x 0.6 cm., with contuso-abraded collar widest infere-laterally by 0.5 cm. edges inverted, back, left infra-scapular area, 12.0 cm. from the posterior median line and 116.0 cm. above left heel; directed forward, upward medially, involving the skin and the underlying soft tissue, thru 7th left intercostal space, into thoracic cavity lacerating the lower lobe of the left lung and the upper lobe of the (L) lung along its course then fracturing the 1st rib (L) anterior and finally making an exit wound, 1.0 x 0.7 cm. irregular shaped, edges everted, chest, left, 2.0 cm. from median line and 124.0 cm. above left heel.

Brain and other visceral organs, pale. Hemothorax, left, approximately 2000 cc. Stomach, ½ filled with food particles."[10]

Upon cross-examination, Dr. Cerna testified that "the point of entry of the two gunshot wounds were at the back, and that since there was no tattooing of the skin the distance of the muzzle of the gun from the skin of the victim could not be beyond 24 inches or two feet."[11] According to Dr. Cerna, between the two wounds sustained by the victim Christopher Carreon, "the fatal wound was the shot that exited on the left chest, since it lacerated the lower and the upper lobe of the lung."[12]

In his defense, accused-appellant testified that he was at the time of the incident at home and asleep. He presented corroborating witnesses in the persons of SPO2 Armando Juallo, his brother-in-law, Loreta Cawayan, sister of the accused and Leonardo Solon, common friend of the accused and the victim. SPO2 Juallo and Loreta Cawayan both testified that Edgar was at home sleeping at the time of the incident, February 28, 1996, at around 12:30 dawn. According to SPO2 Juallo, he was with Edgar on February 27, 1996, 12:00 midnight at Archbishop Reyes Avenue, for he was asking Edgar why the latter took his ring.[13]

Loreta Cawayan testified that her brother was at home at around 10:00 p. m. of February 27, 1996, after which she called her brother-in-law Armando Juallo to tell him that her brother had arrived. At around 12:00 midnight of February 27, 1996, her brother-in-law arrived and asked Edgar to go with them and so they went out of the house.[14]

Another witness for the defense was Leonardo Solon. He testified that in the evening of February 27, 1996, he saw Ram Florita and accused Edgar Cawayan together and when he asked them where they were heading for the two answered that they just came from a drinking spree at the nearby store. The two asked him to go with them to Sitio Sto. Nino, and so he did and they went to the store of Rudy Chan where they drank two bottles of beer grande. Afterwhitch, they proceeded to the Plaza and stayed there until 10:00 in the evening watching a basketball

league game.[15]

According to Leonardo, he accompanied Edgar Cawayan back to his house and turned him over to his Ate Loreta. He then went home and had a drinking session with his neighbors. Then they heard gunshots coming from the direction of the house of Christopher. He went towards the house of Christopher and run into Ram Florita. He asked Ram Florita were he was heading but the latter did not say anything. Upon reaching the house of Christopher, he saw Marichu the wife of Christopher crying and the two ladies Vilma Barrientos and Maricris Vilan.[16]

Leonardo Solons' house is located just in between the house of Edgar Cawayan and Christopher Carreon. According to him, he would have seen Edgar pass by if the latter went back to the house of Christopher and he would have encountered Edgar when he went to check on the house of Christopher after he heard the gunshots.[17]

We find that the guilt of the accused has been proved beyond reasonable doubt. Two witnesses, Vilma and Maricris, positively identified accused-appellant as the assailant. Accused's alibi cannot overcome the eyeball testimonies, especially since it has not been shown that it was impossible for him to be at the scene of the crime at the time of its commission.[18] Accused-appellant claimed he was sleeping when the crime happened. The records, however, showed that his house and that of the victim Christopher Carreon were just a few meters away from each other. As a matter of fact, it was accused who said that "it will not take five minutes walk from his residence to that of the victim Christopher Carreon." [19]

Another factor is the lack of ill motive on the part of the prosecution witnesses Vilma and Maricris, who admitted that both Christopher and accused-appellant Edgar Cawayan were their friends.

"In the absence of any ill motive on the part of the prosecution witness to impute so grave a wrong against the appellant, the defense of denial hardly assumes probative value." [20]

As to the testimony of Leonardo Solon, he could not have seen at all times whether Edgar Cawayan went back to the house of Christopher after he accompanied him home at around 10:00 in the evening of February 27, 1996, as there were many routes that could be taken from the house of Edgar to the house of Christopher, coupled with the fact that he was busy drinking with his neighbors. Between 10:00 p. m. to 12:00 midnight and the distance of the place of the crime and the house of the accused-appellant being just a few meters which is less than five minutes walk, it is highly possible that accused-appellant could have gone to the house of Christopher Carreon and shot the latter and go back to his house.

"For the defense of alibi to prosper, it is not enough that the accused can prove his being at another place at the time of its commission; it is likewise essential that he can show physical impossibility for him to be at the locus delicti." [21]

Consequently, the prosecution was able to establish the guilt of the accused beyond reasonable doubt.

IN VIEW WHEREOF, we AFFIRM the decision of the Regional Trial Court, Cebu City, Branch 14, in Criminal Case No. CBU-40568, finding accused-appellant Edgar Cawayan y Cruz guilty beyond reasonable doubt of murder, and sentencing him to reclusion perpetua and to pay the heirs of the deceased Christopher Carreon fifty thousand pesos (P50,000.00), as civil indemnity and in addition, fifty thousand pesos (P50,000.00) as moral damages.

With costs.

SO ORDERED.

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

[1] RTC Record, Decision, pp. 57-61, Judge Renato C. Dacudao, presiding.

[2] RTC Record, pp. 1-2.

[3] RTC Record, Motion for Compulsory Submission of Accused to Treatment and Rehabilitation, pp. 17-18.

[4] RTC Record, Order, Criminal Case No. CBU-40568, pp. 22-24, 23.

[5] RTC Record, Decision, Criminal Case No. CBU-40568, pp. 57-61, 60-61, Judge Renato C. Dacudao, presiding.

[6] Brief for the accused-appellant, Rollo, pp. 50-60

[7] Ibid., pp. 52-60, 52.

[8] Ibid., p. 56.

[9] TSN, June 24, 1996, pp. 16-24.

[10] Original Record, Exhibit "C", p. 35.

[11] TSN, August 15, 1996, p. 7.

[12] Ibid., p. 16.

[13] TSN, September 10, 1996, pp. 3-5.

[14] Ibid., September 20, 1996, pp. 4-6.

[15] TSN, September 19, 1996, pp. 4-5.

[16] Ibid., pp. 6-8.

[17] Ibid., p. 9.

[18] People vs. Saberola, 297 SCRA 733, 740 [1999].

[19] TSN, September 11, 1996, p. 10.

[20] People vs. Galano, G. R. No. 111806, March 9, 2000; People vs. Tortosa, G. R. No. 116739, July 31, 2000; People vs. Carugal, G. R. No. 123299, September 29, 2000.

[21] People vs. Ulgasen, G. R. Nos. 131824-26, July 11, 2000; People vs. de la Tongga, G. R. No. 133244, July 31, 2000; People vs. Labuguen, G. R. No. 127849, August 9, 2000.

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