PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO BASCO Y SALAO, ACCUSED-APPELLANT.

G.R. No. 129732. November 19, 1999

Ponente: PARDO, J.

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PARDO, J.:

The admixture of liquor, hot heads and insignificant discussion were the dangerous concoction that led to the death of Rolando Buenaventura, Sr.

On September 16, 1993, Assistant City Prosecutor Carmelita S. Gutierrez-Fruelda filed with the Regional Trial Court, Branch 23, Manila, an information against accused Mario Basco y Salao, as follows:

> "That on or about May 3, 1992 in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, attack, assault and use personal violence upon one ROLANDO BUENAVENTRUA, SR. by then and there shooting the latter with a gun on the different parts of his body, thereby inflicting upon him mortal gunshot wounds which were the direct and immediate cause of his death thereafter.
>
> "Contrary to law.
>
> "(s/t) CARMELITA S. GUTIERREZ-FRUELDA
> "Assistant City Prosecutor"[1]

Upon arraignment on October 7, 1993, accused-appellant entered a plea of not guilty.[2] Accordingly, trial was had.

The facts are those duly established through the testimony of Ednalyn Buenaventura, daughter of the deceased, as follows:

At around 8:00 in the evening of May 3, 1992, Rolando Buenaventura, Sr. was having a drinking spree with several men outside his home, at Cabangis, Tondo, Manila. Accused-appellant Mario Basco was with the group drinking beer. Emy, a cousin of the deceased arrived from work. Mang Lando, one of the men in the group invited Emy to have a drink, but he refused and told them that he would drink later on. Emy, however, noticed that accused-appellant Mario Basco was playing with a "balisong", so he warned the latter about it and told him to put it away because it was "nakakailang". Mario who was obviously a bit intoxicated retorted and said "Pare, gusto mo ba talaga ng biruan" and immediately approached Emy and poked the knife at the latter's neck. Because of the sudden approach of accused-appellant and the slippery pavement, Mario slipped and Emy avoided the knife.[3]

At this instance, the deceased Rolando Buenaventura, Sr. asked his other cousin Edong to help Emy, who was being attacked by accused- appellant. Edong then got a chair and was about to strike Mario when Mario's wife arrived and pacified them. Mario, however, continued wielding the knife and accidentally hit Rolly, a son of Rolando Buenaventura, Sr. Seeing that his son was seriously injured, Rolando Buenventura, Sr. became angry and he cursed accused-appellant. A heated exchange ensued.[4]

At the height of the argument between the two, Jaime Macanas, a neighbor who was a policeman, came out of his house, just in front of the house of the Buenaventuras and fired two shots in the air to pacify the men. Then, Mario's wife brought him home. Rolando Buenaventura, Sr. and Emy were left outside the house, but not for long, because Emy went inside the house to sleep.[5]

Rolando Buenaventura, Sr. on the other hand was called by Ednalyn, his daughter and Rolly, his son, to go inside the house and eat supper. When they were about to eat, accused-appellant Mario Basco came calling and cursing Rolando Buenaventura, Sr. Suddenly, accused-appellant was at the door of the Buenaventura house and when Rolando stood up to drink water, accused-appellant immediately shot him, causing him to fall to the ground. Accused-appellant fired another shot at Rolando, then he went nearer and again shot Rolando at close range, hitting him on the chest.[6] He died on the spot. In the autopsy report, the medico-legal examiner found the following:

> "EXTERNAL FINDINGS:
>
> "1. Gunshot wound, thru and thru, with the following entry and exit:
>
> "Point of Entry- at the left temporal region, in front of left ear, circular in shape, 60 inches from heel, 13.5 cms. from anterior midline, measuring 0.3 x 0.3 cms. and contusion collar measures 0.7 x 0.6 cms. and
>
> "Point of Exit-at the right parieto-occipital region, stellate in shape, 64 ½ inches from heel, 3 cms. from posterior midline, measuring 2.2 x 1.3 cms.
>
> "Trajectory-obliquely upward, backward crossing the midline, (from left to right), lacerating the left temporal lobe then crossed the midline then lacerating the parieto-occipital lobes of the right side of the brain. There was tunnel formation along its course filled with blood clots and some bone fragments.
>
> "2. Gunshot wound, with the point of entry at the left mandible, oval in shape, 57 inches from heel, 4 cms. from anterior midline, measuring 1.2 x 0.5 cms. and contusion collar measures 1.8 x 1 cms.
>
> "Trajectory-slightly downward, backward towards midline, fracturing the left mandible on entry, lacerating the muscles of the left jaw, floor of the mouth and the left epiglottis. A deformed slug was extracted in the body of the 2nd cervical vertebra.
>
> "3. Gunshot wound, thru and thru, with the following point of entry and exit:
>
> "Point of entry - right upper anterior thorax, below the right collar bone, 52 inches from heel, 2.5 cms. from anterior midline measuring 0.4 x 0.3 cm. and contusion collar measures 0.7 x 0.9 cms. and tattooing measures 5 x 3 cms.
>
> "Point of Exit-at the right upper posterior thorax, just below the right shoulder blade, 51 inches from heel, 17 cms. from posterior midline, and measuring 1.5 x 1 cms.
>
> "Trajectory-directed obliquely downward, backward towards right lateral, making a thru and thru laceration in the upper lobe of the right lung, then fracturing the inferior border of the right scapula before it exited.
>
> "INTERNAL FINDINGS:
>
> "1. Lacerations of organs and tissues as indicated in the internal extensions of the gunshot wounds with fractures of the left temporal and right occipital bones. There was severe bleeding intra-cranially. About 1000 cc. of blood was extracted in the right thoracic cavity. The rest of the internal organs were pale.
>
> "2. Recovered from the stomach about ½ glassful of partially digested vegetables and with alcoholic odor.
>
> "CAUSE OF DEATH: MULTIPLE (3) Gunshot Wounds.[7]

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The defense, however, had a different version of the events that transpired on that fateful day. According to accused-appellant, it is true that they were having a drinking spree in front of the house of Rolando Buenaventura, Sr. However, he was not the aggressor. His version of the story is that, "In the course of the drinking spree, he had an argument with Emy, a cousin of the deceased. Their altercation angered Rolando Buenaventura, Sr. which resulted in a heated argument between them. They were pacified by Jaime Macanas and he went home to avoid further altercation with Rolando Buenaventura, Sr. However, realizing that he was at fault, he went to Rolando's house intending to apologize. When he was at the doorstep of the house, Rolando emerged pointing a gun at him. Fearing that Rolando might shoot him, he grappled for possession of the gun, and suddenly the gun fell and went off, after which he left immediately.[8]

On July 19, 1996, after consideration of the evidence of both parties, the trial court found accused guilty as charged and rendered decision sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased the amount of P50,000.00 for his death; P100,000.00 as loss of income for his family; P18,000.00 for burial expenses; P1,500.00 spent during the wake and P5,000.00 for the burial lot.[9]

Hence, this appeal.

The accused-appellant alleged that the trial court erred:

1. In failing to appreciate the attendant privileged mitigating circumstance of incomplete self-defense;

2. In ordering accused-appellant to pay for burial expenses and in imposing the penalty of reclusion perpetua; and

3. In finding that evident premeditation qualified the killing of Rolando Buenaventura, Sr. to murder.[10]

We find the appeal without merit.

First, it is an established fact that the deceased Rolando Buenaventura, Sr. sustained three gunshot wounds, as evidenced by the post mortem findings.

We agree with the trial court that if indeed accused-appellant and the deceased grappled for the possession of the gun, and the gun fell and accidentally fired, it is impossible that the deceased would sustain three gunshot wounds. The location and presence of several gunshot wounds on the body of the victim is physical evidence that eloquently refutes accused-appellant's allegation of accidental firing.[11]

Second, Ednalyn Buenaventura, a daughter of the deceased, testified in a more credible manner than accused-appellant and witness Antonio Galvez for the defense, who conveniently stated that accused-appellant was unarmed when they met on the way to the house of deceased Rolando Buenaventura, Sr. The testimony of Ednalyn was clear and convincing, complete with details that jibed with the medico legal findings and testimony of other witnesses. We have held in many cases that "It is not to be lightly supposed that the relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they know to be innocent thereof."[12]

Third, the trial court did not err when it found accused-appellant guilty of murder. Although evident premeditation could not be appreciated as attending the commission of the crime, it was evident that accused-appellant was motivated to commit murder when he went to the house of Rolando Buenaventura, Sr. When accused-appellant shot Rolando Buenaventura, Sr. the latter was eating supper with his children; he was unsuspecting and unaware of the intent of the accused. Accused-appellant, without a word suddenly shot the deceased, and almost immediately after the first shot, fired a second shot hitting the victim on the chest. Not satisfied and obviously to make sure that the victim was dead, accused-appellant approached and shot him at close range directly on the chest causing the bullet to pass thru and thru the body of the victim. This is a clear case of treachery employed by

accused-appellant to ensure the accomplishment of his intent to kill Rolando Buenaventura, Sr.

Under Article 14, paragraph 16 of the Revised Penal Code, 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 specifically to insure its execution without risk to himself arising from the defense which the offended party might make. "For treachery to be appreciated as a qualifying circumstance, two elements must concur: (1) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution is deliberately or consciously adopted."[13] Both elements attended the commission of the killing of Rolando Buenaventura, Sr.

Finally, as to the award of damages, we believe that the two species of damages (actual or compensatory and civil indemnity) differ basically in that civil indemnity ex delicto can be awarded without need of further proof other than the commission of the felony itself, while actual or compensatory damages to be recoverable must be additionally established with reasonable degree of certainty.[14]

WHEREFORE, the decision appealed from is AFFIRMED with the modification that the award for loss of income in the amount of P100,000.00 is deleted.

Costs against accused-appellant.

SO ORDERED.

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

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[1] Rollo, p. 8

[2] RTC Record, p. 60.

[3] TSN, February 3, 1994, pp. 3-5.

[4] Ibid., p. 6.

[5] Ibid., p. 7.

[6] Ibid., pp. 7-9.

[7] RTC Record, Exhibit "C", Post Mortem Findings, p. 8.

[8] TSN, August 10, 1994, pp. 4-11.

[9] RTC Record, Decision, pp. 186-193, at p. 193, Judge William M. Bayhon, presiding.

[10] Brief for Accused-Appellant, Rollo, p. 43.

[11] People vs. Mangahas, G. R. No. 118777, July 28, 1999, citing People vs. Amaro, 235 SCRA 8 [1994] and People vs. Guarin, 259 SCRA 95 [1996]; see also, People vs. Gregorio, 255 SCRA 380 [1996]; People vs. Lopez, 245 SCRA 95 [1995]; People vs. Anciro, 228 SCRA 629 [1993]; People vs. Martinado, 214 SCRA 712 [1992].

[12] People vs. Dianos, 297 SCRA 191 [1998]; People vs. Crisostomo, 293 SCRA 65, 73 [1998], citing People vs. Libed, 14 SCRA 410 [1965]; see also People vs. Galapin, 293 SCRA 474 [1998].

[13] People vs.Mangahas, supra; People vs. Silvestre, G. R. No. 127573, May 12, 1999; People vs. Dorado, G. R. No. 122248, February 11, 1999.

[14] People vs. Dianos, supra, on p. 212.

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