PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AUGUSTO TANZON Y DELOS REYES, ACCUSED-APPELLANT.

G.R. No. 129793. December 15, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us is an appeal from a decision rendered by the Regional Trial Court, Branch 83 of Quezon City,[1] convicting accused-appellant, Augusto Tanzon y De los Reyes of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The facts of the case as culled from the records are as follows:

In the evening of November 19, 1994, the deceased Lemuel Juanillo y Egeron was walking home from work with his common-law wife, Liza Quilang, when they happened to pass by accused-appellant Augusto Tanzon and four of his friends having a drinking spree in front of accused-appellant's home in No. 28 A. Tanzon Street, Area 6, Sitio Cabuyao, Barangay Sauyo, Novaliches, Quezon City. Accused-appellant invited the deceased for a drink but the latter refused since he already had some drinks earlier at his place of work and he just wanted to get home to rest. When Liza, who was seven (7) arms length ahead of the deceased, turned to look back at her husband, she was horrified to see accused-appellant Augusto Tanzon let out a burst of gunfire from a long metal pipe he was holding, hitting the deceased from behind and causing him to fall immediately.

As another shot rang out, Liza shouted invectives at the accused-appellant and his friends and told them to stop shooting, but her protestations fell on deaf ears. Accused-appellant's companions dragged the deceased seven (7) meters away from where he lay.[2] Accused-appellant then entered his house and after a short interval came out, this time holding a small gun which he used to shoot the deceased who was lying prostrate on the ground. Accused-appellant's friends then kicked, punched and slumped a chair on the deceased. Liza started screaming again at her husband's assailants but one of the men just told her, "Wala kang nakita."[3]

When the men left, Liza tried to approach her husband but one of them returned and began to shoot. He shot Liza thrice but Liza escaped unscathed because she ran "zigzagging" on the street towards the house of her in-laws located at the upper portion of the street, fifty (50) meters away.[4] It was only after an hour, when the policemen arrived, that Liza and her mother-in-law were able to approach the body of the deceased.[5] The policemen brought the body of the deceased to the funeral parlor while Liza went to the precinct together with the other policemen to file a complaint against the accused-appellant.[6]

Liza's story is corroborated by Paz Tumbagahan, a neighbor, who testified that on the night in question, at about 11:30 o'clock in the evening, she heard a gunshot. Curious as to where the shot originated, Paz went out of her house and stood near a NAWASA tank when she saw Augusto Tanzon with some friends poking a long metal pipe at someone whom she could not identify because the latter was in a dim corner of the street. Paz had no trouble ascertaining the identity of accused-appellant since he and his group were standing in a portion which was well lighted.[7] When another shot rang out, Paz heard a woman scream. As this was followed by one more shot,

she saw Liza Quilang running in a zigzag manner, being chased by Alex Tanzon, the son of accused-appellant.[8] Alex fired three shots after which he stopped chasing Liza. Having failed to overtake her, he turned his ire on the other onlookers saying, "Bumaba ang matapang."[9]

On December 2, 1994, an information was filed against accused-appellant which reads:

> "The undersigned accuses AUGUSTO TANZON Y DE LOS REYES of the crime of MURDER, committed as follows:
>
> That on or about the 19th of November, 1994, in Quezon city, Philippines, the above-named accused, conspiring, confederating with one other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, and without justifiable cause, with treachery and abuse of superior strength did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one LEMUEL JUANILLO y EGERON in the manner as follows: Accused Augusto Tanzon y de los Reyes shot said victim with a long gun and causing him to fall to the ground and again shot the fallen body at the back with a short gun which was the direct and immediate cause of his untimely death, that in the furtherance thereof, and to augment his sufferings, with evident premeditation and cruelty, his co-accused deliberately kicked, slapped and dragged the victim and after which accused Augusto Tanzon y de los Reyes shot again the victim's body with a handgun, to the damage and prejudice of the heirs of the offended party.
>
> CONTRARY TO LAW."[10]

Accused-appellant pleaded not guilty at his arraignment. His defense is as follows:

On the evening of November 19, 1994, specifically from 7:00 o'clock to 11:00 o'clock, accused-appellant was in his house along A. Tanzon Street, Novaliches Quezon City tending to the guests of his daughter, Cristina, who was celebrating her birthday. The party proceeded smoothly, with some of the guests singing and dancing. Accused-appellant joined the revelry by lighting some firecrackers which was brought by a guest. At around 11:00 o'clock in the evening, two persons, whom he recognized as Mike Tumbagahan and a certain Tino, entered their compound and started to have an altercation with the guests. Fortunately, the Barangay Secretary, Vic Arcayna, was around and he approached the two men, and asked them not to create any scene. At this point, a shot, coming from the upper part of A. Tanzon Street was heard, creating panic among the guests.

Accused-appellant immediately gathered all the guests together and herded them into his house. Nobody ventured out into the street until after some policemen arrived.[11] It was only then that accused-appellant was informed that somebody had been shot dead in the street right in front of his house. To his surprise, the policemen informed him that he had been charged by the wife of the deceased as the perpetrator of the crime. Accused-appellant acceded to the request of the policemen to go with them to the precinct for questioning. At the police station, accused-appellant was no longer interrogated but was simply detained after he executed a sworn statement in the presence of the fiscal.[12]

Accused-appellant's testimony is corroborated by Victor Arcayna, the barangay secretary who, at the time of the incident, was one of the guests at Cristina's birthday party. Arcayna testified that he arrived at the Tanzon residence between 7:00 o'clock and 7:30 o'clock in the evening on November 19, 1994, accompanied by two barangay tanods.[13] Subsequently, at around 11:00 o'clock in the evening of the same day, two persons, who were later identified as Miguel Tumbagahan and Tino, arrived. Since the two persons were not invited, Arcayna approached them and cautioned them not to make any trouble. As Arcayna turned to go back to his table, the two had an altercation with the guests. Panic ensued among the guests when somebody shouted, "May mga taong pababa rito, armado yon ang sabi."[14] Arcayna and accused-appellant then herded the guests into the house

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where everyone remained until some policemen arrived.[15] While inside the house, Arcayna heard four gunshots coming from the street.[16]

Liza Amatos, one of the guests invited to the birthday party, testified that she and her husband were among the fourteen (14) guests who joined Cristina in the celebration.[17] At around 11:00 o'clock of the night in question, she saw two men enter the yard of the Tanzon residence. A commotion thereafter ensued and several shots were heard prompting accused-appellant to usher the guests inside his house.[18]

Cristina Tanzon, the daughter of accused-appellant, who was celebrating her birthday on the night of the incident also testified that she held her party on the grounds of their house in 28-A Tanzon Street, Area Sitio, Sauyo, Novaliches, Quezon City. There were around 30 guests[19] including eight (8) children. The celebration started at around 8:00 o'clock in the evening and proceeded smoothly with some of the guests dancing and singing. Cristina's father even lit some firecrackers to celebrate the occasion.[20] At around 10:30 o'clock in the evening, she heard a shot coming from the upper part of Tanzon Street. The next thing she saw was her father and Mr. Arcayna herding the guests into the house. Accused-appellant reportedly told the guests, "Huwag kayong lalabas, may kaguluhan sa labas." At around 12:00 o'clock midnight, she learned from a policeman that a person was killed outside.[21]

Rosita Panes, a neighbor of accused-appellant, testified that from 9:00 o'clock to 11:00 o'clock on the night in question, she was in front of her house which was five (5) meters away from the Tanzon residence, watching Cristina's birthday celebration.[22] Although she was invited, she decided not to attend the party since there was no one to take care of her small children.[23] While watching the celebration in front of her house, Rosita saw some men running from the elevated portion of Tanzon Street carrying guns and shouting. When she heard some shots being fired, Rosita hurried back to her house and locked the door.[24]

> On June 30, 1997, the trial court rendered judgment against accused-appellant, the dispositive portion of which reads as follows:
>
> WHEREFORE, the prosecution having established the guilt of Augusto Tanzon y de los Reyes beyond reasonable doubt of the offense of Murder, this Court finds him GUILTY thereof and hereby sentences him to suffer a prison term of reclusion perpetua and to pay the costs.
>
> Accused Augusto Tanzon is hereby further ordered to pay the heirs of deceased Lemuel Juanillo the following:
> a) Fifty Thousand Pesos (P50,000.00) as indemnification for his death;
> b) Fifteen Thousand Pesos (P15,000.00) as actual damages representing expenses for his funeral services; and
> c) Fifty Thousand pesos (P50,000.00) as moral damages.

The other claims for damages are hereby DENIED.

SO ORDERED.[25]

In his appeal, accused-appellant contends that the testimonies of the witnesses for the prosecution are full of inconsistencies to be worthy of any credence. According to him, Liza Quilang's testimony that he shot her husband twice with a shotgun is inconsistent with the autopsy report that the nine (9) shotgun wounds found in the body of the victim was caused by a single bullet from a shotgun commonly known as "sumpak." Accused-appellant also asserts that it would not have been possible for Paz Tumbagahan to witness the shooting incident while standing near the NAWASA tank which was located ninety (90) meters away from where the crime happened.

We are not convinced.

The rule is settled that in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued as to impeach the findings of the trial court, the appellate courts will not interfere with the trial court's findings on the credibility of the witnesses or set aside its judgment considering that it is in a better position to decide the question having heard the witnesses themselves during trial.[26]

Accused-appellant assails the credibility of Liza Quilang saying that her testimony that he shot her husband twice with a long gun is inconsistent with the autopsy report which revealed that the shotgun wounds found on the body of the victim is caused by a single bullet from a shotgun commonly known as "sumpak." He alleges that assuming that the second shot might have missed hitting the victim, then "the victim would have scurried off at the first gunfire."

An autopsy conducted on the deceased by Chief Inspector Florante F. Baltazar showed that he sustained (9) shotgun wounds and a gunshot wound, presumably, from a .38 caliber gun.[27] According to Dr. Baltazar, the nine wounds came from a shotgun because the five (5) pellets recovered are ordinarily used in a shotgun commonly known as sumpak.[28] Although there were nine (9) wounds, they were caused by a single shot which burst in different directions. Dr. Baltazar said that only five (5) pellets were recovered since the other wounds had exits.[29]

It appears that the entry points of all the gunshot wounds were found at the back of the victim, consistent with Liza's testimony that her husband was shot from behind. Moreover, Liza's testimony that the companions of accused-appellant dragged the body of the deceased after he was shot is corroborated by the multiple abrasions found on the abdominal region, arms and right knee of the deceased.[30] Dr. Baltazar testified that the abrasions could have been caused by the body of the victim having come in contact with a rough surface.[31] It has also been established that accused-appellant's right hand was found to have been positive for gun powder nitrates, which could have only been caused by the firing or discharge of a gun. Mrs. De Villa, the forensic chemist who conducted a paraffin test on the accused-appellant, dismissed any possibility that the traces of gun powder nitrate on the right hand of accused-appellant could have been caused by the firecrackers he lit on the night of November 19, 1994 considering that the same traces of the gun powder nitrates can be detected only if the firecracker exploded while in accused-appellant's hands.[32] Clearly, Liza's testimony is materially corroborated by the autopsy conducted on the deceased. The most honest witness may make mistakes sometimes but such honest lapses do not necessarily impair his credibility or destroy the essential integrity of the prosecution as a whole.[33]

Accused-appellant, however, dismisses the findings of the trial court that the gun powder nitrate found on his right hand is evidence of his having fired a gun. He points out that the murder weapons used, i.e., the shotgun and the handgun, were never presented by the prosecution in evidence.

Accused-appellant's assertion deserves scant consideration inasmuch as the presentation of the murder weapons is not indispensable to the prosecution of the accused. Verily, the non-presentation by the prosecution of the items which the accused is charged of having armed himself with in attacking, assaulting, stoning and stabbing the victim is not fatal where the accused has been positively identified.[34]

As to accused-appellant's contention that it would have been impossible for Paz Tumbagahan to have witnessed the shooting incident ninety (90) meters away from where she stood, there is nothing in the records which supports accused-appellant's assertion that the NAWASA tank was ninety (90) meters away from the place of the incident. On the contrary, the ocular inspection conducted by the trial court shows that the NAWASA tank is only forty-five (45) meters away from the place where the incident took place and it was not impossible for a person standing near the tank to have observed any incident that might have taken place on the street fronting

accused-appellant's home.[35] Even if we are to disregard the testimony of Paz Tumbagahan, we are not completely left without an eyewitness to the crime because Liza Quilang was just seven arms length away from her husband when he was shot by accused-appellant. The place where the incident happened was well-lighted. Liza knew the accused-appellant since they lived in the same barangay and accused-appellant's son was said to be a friend of the deceased. Thus, she could not have been mistaken in identifying the accused-appellant as one of the men who shot her husband. Considering that accused-appellant himself admitted that he never had any misunderstanding or quarrel with the family of the deceased prior to the incident, we find no reason not to give any credence to the private complainant's testimony.[36]

The testimonies of the witnesses for the defense, on the other hand, present a study in contradictions. While accused-appellant and Vic Arcayna insist that trouble started when two uninvited guests arrived at Cristina's birthday party, the birthday celebrant herself could recall no such incident.[37] It was only about three weeks later, when Cristina again took the witness stand, that she conveniently remembered the trouble that started on the night in question when the two uninvited guests arrived.[38] While a neighbor, Rosita Panes, who supposedly watched the whole celebration from 9:00 o'clock to 11:00 o'clock in the evening positively stated that Cristina's visitors were all adults,[39] the birthday celebrant herself said that eight (8) children were invited as guests.[40] While Cristina said there were around thirty (30) guests on the night in question, another witness, Liza Amatos, claimed there were only fourteen (14). The fact that the people who were supposedly present at the scene of the crime could not even agree as to the simple details relating to the incident on the night in question inevitably casts doubt on their credibility. Also, we find it strange that the Barangay Secretary has not bothered to intervene and ascertain the identity of the deceased who was shot just in front of the house where he was at the time of the incident. Admittedly, Arcayna never exerted any effort to attend to the family of the deceased who were gathered near accused-appellant's home after the commotion died down.[41]

With regard to the moral damages awarded by the trial court, the sum of P50,000.00 granted to the heirs of the deceased is proper in line with the prevailing jurisprudence.[42] The trial court, however, erred in failing to award the sum of P50,000.00 as civil indemnity to the heirs of the deceased in addition to the grant of moral damages. It is settled that civil indemnity ex delicto can be awarded forthwith to the heirs of the victim by proof alone of such fact of death.[43]

One final note. Cruelty can neither be appreciated as aggravating circumstance nor attendant circumstance in the case at bar since it has not been shown that accused-appellant and his companions deliberately employed means to augment the suffering of the deceased. It bears emphasis that the nature of the aggravating circumstance of cruelty lies in the fact that the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him moral and physical pain which is unnecessary for the consummation of the criminal act which he intended to commit, a fact which does not obtain in the case at bar.

WHEREFORE, the decision of the Regional Trial Court of Quezon City, Branch 83, in Criminal Case No. Q-94-59623, convicting accused-appellant Augusto Tanzon y de los Reyes of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay the heirs of the deceased an additional sum of P50,000.00 by way of civil indemnity.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

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[1] Penned by Judge Estrella T. Estrada.

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[2] TSN, January 23, 1995, p. 22.

[3] TSN, January 18, 1995, p. 8.

[4] TSN, January 18, 1995, p. 9.

[5] TSN, January 23, 1995, p. 44.

[6] TSN, January 18, 1995, pp. 10-11.

[7] TSN, February 27, 1995, pp. 37-38.

[8] TSN, February 27, 1995, pp. 7-10.

[9] TSN, February 27, 1995, p. 11.

[10] Records, p. 1.

[11] TSN, June 19, 1996, pp. 15-18; July 1, 1996, pp. 18-34.

[12] TSN, July 1, 1996, p. 43.

[13] TSN, November 15, 1995, p. 9.

[14] TSN, January 8, 1996, p. 16.

[15] TSN, November 15, 1995, pp. 14-22.

[16] TSN, January 8, 1996.

[17] TSN, January 29, 1996, p. 25.

[18] TSN, January 29, 1996, pp. 27-29.

[19] TSN, March 25, 1996, p. 19.

[20] TSN, March 25, 1996, pp. 37-38.

[21] TSN, March 25, 1996, pp. 6-7.

[22] TSN, March 4, 1996, p. 13.

[23] TSN, March 4, 1996, pp. 6; 29.

[24] TSN, March 4, 1996, pp. 6-8.

[25] Rollo, p. 259.

[26] People vs. Guiamil, 277 SCRA 658 [1997].

[27] Records, p. 117.

[28] TSN, June 14, 1995, p. 23.

[29] TSN, June 14, 1995, p. 24.

[30] Records, p. 117.

[31] TSN, June 15, 1995, p. 30.

[32] TSN, February 15, 1995, p. 16.

[33] People vs. Guiamil, supra.

[34] People vs. Padao, 267 SCRA 64 [1997].

[35] Records, pp. 50-52.

[36] TSN, June 19, 1996, p. 39.

[37] TSN, March 25, 1996, p. 61.

[38] TSN, April 15, 1996, pp. 39-40; 42.

[39] TSN, March 4, 1996, p. 29.

[40] TSN, March 25, 1996, p. 44.

[41] TSN, January 8, 1992, p. 32.

[42] People vs. Degamo, G.R. No. 129535, July 20, 1999.

[43] People vs. Dianos, G.R. No. 119311, October 7, 1998.

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