

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLDAN BOHOL Y GALICIA, ACCUSED-APPELLANT.

G.R. No. 130587. July 12, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal taken by accused Roldan Bohol y Galicia from a judgment[1] of conviction rendered by the Regional Trial Court, Masbate, Branch 49, Cataingan, sentencing him to reclusion perpetua, with all its accessory penalties, and ordering him to indemnify the legal heirs of the victim, Aurelia Cabataña, in the amount of three hundred ninety thousand pesos (P390,000.00) as loss of net earnings, fifty thousand pesos (P50,000.00) as moral damages, twenty thousand pesos (P20,000.00) as exemplary damages, and ten thousand pesos (P10,000.00) for attorney's fees.

On July 3, 1989, Assistant Provincial Prosecutor Juan M. Gallego of Masbate filed with the Regional Trial Court, Masbate, Branch 49, Cataingan, an information charging Roldan Bohol y Galicia with kidnapping with murder, committed as follows:

"That on or about May 1, 1989, at about 12:00 midnight, at Poblacion, Municipality of Pio V. Corpus, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused thru force and intimidation and with the intention of depriving the victim of her personal liberty, did then and there waylaid Aurelia Cabataña and dragged her towards a direction opposite to where the victim was intending to go and once there with intent to kill, with treachery, evident premeditation and use of superior strength, did then and there willfully, unlawfully, and feloniously shot the victim four times hitting the latter on the different parts of her body which caused her instantaneous death." [2]

At the arraignment on December 11, 1989, accused Roldan Bohol pleaded not guilty.[3] Subsequently, trial ensued.

The facts, as found by the trial court, are as follows:

On May 1, 1989, at around 8:00 in the evening, Epitacia Centeno, 49 years old, was with her child, watching the induction ceremony of the town's barangay officials in the enclosed town plaza of Poblacion, Pio V. Corpus, Masbate.[4] At around 12:00 midnight, she decided to go home. Before heading to her house, she walked to her mother's house to leave her child there. Clutching her sleeping child, she made her way past a bridge near a church. As she approached the bridge, she saw two people on the road near her mother's house, at a distance of about thirty meters from her. She recognized one of them as her neighbor, accused Roldan Bohol. The other person wore barong tagalog and black pants. She saw accused Bohol, half-naked, armed with a gun, and forcibly dragging the person wearing barong tagalog in front of the house of her mother.

Frightened, Epitacia hid herself behind ornamental plants about twenty meters away from Bohol. Aided by a lamp placed on the porch of her mother's house and a "parol" hanging in the house of her elder sister Lagring,[5] Epitacia watched in silence as Bohol, with his hand around the waist of the person he was dragging, covered the

other person's mouth with his left hand. Then, accused Bohol stopped and aimed a gun at the other person. Suddenly, two gunshots were heard and the person in barong tagalog fell to the ground. Bohol moved closer to the prostrate body and fired two additional shots. Then, he walked away.

Stunned by the scene she had witnessed, Epitacia ran straight home instead of going to her mother's house. A few minutes after reaching her house, somebody called her up to inform her that her sister had been shot near her mother's house. Epitacia ran towards her mother's house again and realized that the person in barong tagalog whom she saw earlier was her youngest sister, Aurelia Cabataña. Soaked in blood, 41-year-old Aurelia Cabataña wore barong tagalog and long black pants, her costume for the folk-dance of the elementary school teachers in the program at the town plaza that night. Aurelia was placed on board a jeepney bound for the nearest hospital. She died on the way.

At around 5:00 in the morning of May 2, 1989, the incident was reported to the police and entered in the police blotter. Policemen conducted an investigation at the crime scene and retrieved the following items: a white sando T-shirt with red markings and three ribbons with latin words; a necklace with a bottle containing wooden items inside; and a coconut shell triangular in size tied with a nylon rope. They failed to recover the gun used in the shooting.

On the same day, at around 9:00 in the morning, Dr. Primitivo Monterde, the Municipal Health Officer for Cataingan and Esperanza, Masbate, conducted an autopsy on the victim, revealing the following injuries:

- "1. Wounds, gunshot (entrance) 1.0 in. in diameter, located at temporal region, penetrating the skull, traversing the front lobe, making a wound, lacerated (exit) 3.0 in. in diameter, parietal region, right, with avulsion of brain tissue. (deformed slug embedded in parietal bone), head.
2. Wound, gunshot, 1.0 in diameter (entrance) located at temporal region, left, penetrating the scalp, perforating skull and lacerating the brain tissues making a wound, lacerated (exit) 2.0 in. in diameter, occipital region, head.
3. Wound, gunshot (entrance) 1.5 in. in diameter, located at the epigastric region, penetrating the muscle, perforating the intestines ending blindly in the mesentric tissues. (slug not recovered)."[6]

According to the medico legal expert, the cause of death was "hemorrhage secondary to wounds, gunshot, multiple."[7] He also noted that the first two fatal gunshot wounds were found in the head, while the third was located at the center of the stomach of the victim.

Accused Roldan Bohol denied the charge and claimed that from 6:00 in the evening of May 1, 1989 until 2:00 of early dawn, he stayed inside the enclosed plaza of the town of Pio V. Corpus, attending to the visitors of the mayor and watching the festivities of the induction of barangay officials. He was in the company of high-ranking government officials of the town.[8] He sat beside his wife and children and behind barangay captain Diomedes Amaroto. Although he sometimes left his seat to run errands for the mayor, he never left the confines of the plaza area.[9]

At around midnight, a commotion outside the plaza interrupted the induction program and caused people to disperse. A policeman arrived to inform accused Bohol that someone had been shot near the plaza and suggested that people should not leave the premises. Bohol relayed this information to the guests of the mayor and remained inside the plaza to avoid being implicated in the killing.[10] He denied ownership of the items found by policemen.[11]

Diomedes Amaroto, Sr., barangay captain of Poblacion, Pio V. Corpus, Masbate, testified that the town plaza is forty meters away from the place where Aurelia Cabataña was shot and that it would only take a minute to travel

from one place to the other.[12] This distance was also corroborated by the wife of accused Bohol, who stated that it would even take less than a minute to reach the scene of the crime from the town plaza if the person would walk fast.[13] Accused Bohol also revealed that the town plaza had three exit points.[14]

Fausto L. Seachon testified that when the shooting incident occurred, accused Bohol was with barangay captain Amaroto and his wife.[15] However, he could not be certain whether accused Bohol remained in the plaza during the entire affair up to 2:00 in the morning, saying that sometimes somebody would ask accused-appellant to buy cigarettes. He was busy during the affair that night.[16]

Barangay Captain Diomedes Amaroto testified that he went inside the town plaza together with accused Bohol early in the night to attend the induction of the barangay officials. However, he admitted that accused-appellant was not always beside him during the affair.[17]

On June 3, 1993, the trial court rendered a decision convicting accused Roldan Bohol y Galicia of murder, not kidnapping with murder, and disposed of the case as follows:

"ACCORDINGLY, the court finds the accused Roldan Bohol guilty beyond reasonable doubt of the crime of MURDER and hereby imposes upon him the penalty of RECLUSION PERPETUA, with all the accessory penalties under the Code, and shall indemnify the legal heirs the amount of P390,000 as loss of net earnings, P50,000 as moral damages, P20,000 as exemplary damages, and P10,000 for attorney's fees."

"SO ORDERED.

"Cataingan, Masbate, June 3, 1997.

"HENRY B. BASILLA

Judge"[18]

Hence, this appeal.

Accused-appellant invoked alibi as a defense, contending that he could not have been the murderer because he stayed in the town plaza the whole night.

For alibi to be tenable, accused must establish by clear and convincing evidence that he was somewhere else when the crime was committed and that it was physically impossible for him to be at the crime scene at the time of commission.[19] Accused-appellant presented witnesses to corroborate his claim of alibi.

Defense witness Fausto L. Seachon testified that he saw accused-appellant constantly with barangay captain Amaroto, but could not account for the movements of accused-appellant the whole night because he also had to entertain some guests, being the mayor of the town. Defense witness Diomedes Amaroto was also involved with the oath-taking ceremonies and could not have maintained a watchful eye on accused-appellant the entire night. Thus, none of the witnesses could convincingly confirm that accused-appellant never left the plaza that night for they were all preoccupied with their respective activities.

Moreover, the trial court found the testimony of accused-appellant's witnesses as biased and unworthy of belief.[20] Having seen and heard the witnesses themselves and observed their demeanor and manner of testifying, the trial court's assessment of the credibility of witness commands great weight and respect. Its factual findings can only be overturned if the trial court overlooked facts of substance and value which, if considered, might alter the result of the case.[21]

Furthermore, evidence showed that the town plaza was only around forty meters from the place where the victim was shot and may be negotiated on foot in a minute or less. Accused-appellant even admitted that the town plaza

had three exit points, which may be used to leave the premises undetected. Thus, it was not physically impossible for accused-appellant to be at the scene of the crime at the time of the shooting.

In his brief, accused-appellant assailed the credibility of prosecution witness Epitacia Centena, who positively identified accused-appellant as the person who shot Aurelia Cabatana. According to accused-appellant, this witness could not have convincingly identified him as the gunman because she failed to even notice that the victim was her own sister.

It is undisputed that the witness is familiar with the physical features of accused-appellant since he used to be her neighbor. The fact that the witness Epitacia failed to recognize her sister during the incident is not surprising, for the latter was not in her usual attire. The victim was wearing barong tagalog and black pants, an attire usually worn by men, as costume for the induction program. Also, accused-appellant had his hand over the victim's mouth and his arm around her waist, partly covering her.

Despite a grueling cross-examination, witness Epitacia stood steadfast in declaring that it was accused-appellant who shot her sister. No reason was established for the witness to falsely impute the crime against accused-appellant. Moreover, the witness is a sister of the victim and with great motive to see to it that the real perpetrator of the crime be brought to justice. "When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit." [22]

Given the positive identification of accused-appellant by a credible witness and the lack of physical impossibility for him to be at the scene of the crime at the time of the killing, the defense of alibi must fail.

However, we disagree with the finding of the trial court that treachery attended the commission of the offense. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. [23] From the evidence, the manner in which accused-appellant killed the victim showed abuse of superior strength, not treachery. An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. [24] Although the victim was dragged and prevented from escaping, the evidence failed to adequately show that the attack was sudden, unexpected and executed in a treacherous manner.

The aggravating circumstance of nighttime was not shown to have facilitated the commission of the offense, and may not be appreciated against accused-appellant. Nocturnity, as an aggravating circumstance, must have been deliberately sought by the offender to facilitate the crime or prevent its discovery or evade his capture or facilitate his escape. [25] In this case, although the crime was committed at night, evidence was lacking to prove that nighttime was purposely sought in order to commit the crime. Thus, the killing in this case is qualified by abuse of superior strength, and not aggravated by other generic circumstances.

At the time of the commission of the crime in 1989, the penalty prescribed for murder under Article 248 of the Revised Penal Code then in effect was reclusion temporal to death. There being no aggravating or mitigating circumstances attending the commission of the crime, the penalty imposable is in the medium period, which is reclusion perpetua.

The Solicitor General recommended that the death indemnity imposed on accused-appellant be increased from fifty thousand (P50,000.00) pesos to seventy-five thousand (P75,000.00) pesos, citing *People v. Victor*. [26] In the case cited, however, the Court increased the indemnity for the victim in cases where rape was qualified by any of the circumstances under which the death penalty was authorized. [27] However, the case at bar is one for murder,

where the indemnity for death of the victim is set at P50,000.00 in accordance with current jurisprudence.[28] Thus, the trial court properly awarded the amount of fifty thousand (P50,000.00) pesos as death indemnity, which may be awarded without need of proof other than the commission of the crime.

Moral damages awarded by the trial court should be increased to P50,000.00, considering the mental suffering experienced by the family of the victim for the untimely death of the only member of the family who finished schooling. Moral damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries or the victim's death, as in this case.[29]

Exemplary damages given by the trial court must be deleted, considering the absence of aggravating circumstances which would justify such an award.[30]

WHEREFORE, the Court hereby AFFIRMS the decision of the Regional Trial Court, Masbate, Branch 49 Cataingan, in Criminal Case No. 431 finding accused-appellant Roldan Bohol y Galicia guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, and sentencing him to reclusion perpetua, and to indemnify the heirs of the victim, Aurelia Cabataña, in the amount of fifty thousand (P50,000.00) pesos as death indemnity and three hundred ninety thousand (P390,000.00) pesos as loss of net earnings. The Court MODIFIES the decision appealed from by INCREASING the award of moral damages to fifty thousand (P50,000.00) pesos but DELETING the amounts awarded as exemplary damages and attorney's fees. With costs.

SO ORDERED.

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

[1] In Criminal Case No. 431, dated June 3, 1997, Judge Henry B. Basilla, presiding.

[2] Information, Original Record, p. 1.

[3] Certificate of Arraignment, Original Record, p. 48.

[4] TSN, June 18, 1992, pp. 6-7.

[5] Ibid., p. 20.

[6] Autopsy Report, Original Record, p. 8.

[7] Autopsy Report, Original Record, p. 8.

[8] Mayor Fausto Seachon, Atty. Ruben Songco, Diomedes Amaroto, Sr., Captain Lilao, Judge Arcueno.

[9] TSN, November 5, 1996, pp. 6-7.

[10] TSN, March 11, 1997, pp. 5-7.

[11] Ibid., pp. 8-9.

[12] TSN, July 9, 1996, p. 13.

[13] Testimony of Virginita Y. Bohol, TSN, November 5, 1996, pp. 9-10.

[14] TSN, March 11, 1997, pp. 20-21.

[15] TSN, January 9, 1997, p. 8.

[16] Ibid., p. 10.

- [17] TSN, July 9, 1996, p. 9.
- [18] Decision, Original Record, pp. 613-614.
- [19] People vs. Flores, G. R. No. 129284, March 17, 2000.
- [20] Decision, Original Record, p. 612.
- [21] People vs. Flores, supra, Note 19.
- [22] People vs. Francisco, G. R. No. 110873, September 23, 1999.
- [23] People vs. Oliano, 287 SCRA 158 (1998).
- [24] People vs. Guzman, 107 Phil. 1122 (1960).
- [25] People vs. Atop, 286 SCRA 157 (1998).

[26] 292 SCRA 186 (1998).

- [27] Under Republic Act No. 7659, known as "An Act to Impose the Death Penalty on Certain Heinous Crimes".
- [28] People vs. Cabande, G. R. No. 132747, February 8, 2000.
- [29] People vs. Monte, G. R. No. 125332, March 2, 2000.
- [30] People vs. Bergante, 286 SCRA 629 (1998); People vs. Reyes, 287 SCRA 229 (1998).

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