PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY SILVA ALIAS “SITOY” AND ALEXANDER GULANE Y OLEDAN ALIAS “ALEX OR ARMANDO,” ACCUSED-APPELLANTS.

G.R. No. 131591. December 29, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Accused-appellants GERRY SILVA alias "Sitoy" and ALEXANDER GULANE Y OLEDAN alias "Alex or Armando" were found guilty of murder by the Regional Trial Court for the killing of Leo Latoja and were sentenced to reclusion perpetua as well as to pay the heirs of the deceased P20,000.00 for actual expenses, P50,000.00 for civil indemnity, another P50,000.00 for moral damages, and to pay the costs.[1]

On 21 December 1995, before leaving for work that morning, Leo Latoja bade farewell to his wife Shirley, his one (1)-year old child and his mother Estelita without realizing that it would be his final filial adieu.

On his way to work Leo found out that he had no money for his fare. But, not wanting to go back home as his child would always insist on going with him, he sent a co-worker to his house for money while he waited beside a parked tricycle to take him to the office. Upon learning of Leo's predicament, his wife Shirley went to see him who was some two hundred (200) meters away from their house. Shirley however failed to give Leo the money because she forgot her purse. Shortly after, Leo's mother, Estelita, followed Shirley because her child was again having his usual tantrums. When Leo saw his mother, he asked money from her and she readily obliged. Moments after she turned her back from Leo and took two (2) steps away, Estelita was startled by a gunshot prompting her to turn her head towards the direction of the gunfire. There she saw Gerry "Sitoy" Silva accompanied by two (2) armed men, later identified as "Alex" and "Boy," poking a gun at Leo. Leo did not immediately fall as he was being supported by Shirley. Instinctively, Estelita uttered, "'wag, 'wag, anak ko 'yan," while Leo, now bleeding from the face down, pleaded, "'wag di tayo talo." Shirley was petrified and could not do or say anything. In a vain attempt to ward off the attack, Estelita lunged at "Sitoy" but the latter hit her on the head and violently pushed her aside causing her to fall back. Thereafter, "Sitoy," "Alex" and "Boy" successively and repeatedly fired their guns at Leo who fell on the pavement now soaked in his own blood, after which, the three (3) assailants dashed towards a nearby alley.

Despite the milling of a growing crowd, no one dared go to the rescue of the fallen victim. Mother and son had to fend for themselves. Estelita brought Leo to the Tondo General Hospital but he died before they could get there.

Leo's cadaver was autopsied by Dra. Rosaline Cosidon of the PNP Crime Laboratory Service who found the cause of death to be hemorrhage as a result of multiple gunshot wounds.[2] The Medico-Legal Report listed (9) nine gunshot wounds and (3) three abrasions located at the different parts of the victim's body.

Estelita immediately reported the matter to SPO1 Serrano of the Navotas Police who accordingly prepared a

blotter report showing the following entries -[3]

> x x x Victim is Leo Latoja y Achaso, 32, laborer, single and res. at #109 BS, SJ, Nav., MM. Suspects were 3 unidentified malefactors armed w/unknown F/A, & the witness was one ESTELITA LATOJA y ACHASO, 52, widow and res. at the same place (italics supplied).
>
> x x x she saw her son fell down his back on the ground of the cemented road and bathed w/his own blood while his unknown attacker armed w/unknown handgun was standing pointing the gun to his son prompting her to hold tight the suspect; at this juncture, another 2 suspects armed with handguns shot her son repeatedly in his head x x x (italics supplied).

On 17 May 1996 an Information for murder was filed against Gerry Silva alias "Sitoy" and two (2) "John Does." On 9 December 1996 the Information was amended specifically naming Gerry "Sitoy" Silva, Alexander "Alex or Armando" Gulane y Oledan, and Gilbert "Boy" Araneta who was at large, for the murder of Leo Litoja.[4]

Gerry Silva alias "Sitoy" denied culpability for the killing of Leo Latoja.[5] According to him, he and the victim were both courting a girl which rivalry eventually resulted in a fist fight between them on 25 May 1995. He maintained that after the incident there was no occasion for him and Leo to meet because the latter would leave for work everyday. Although he had no personal knowledge of the fact that Estelita was aware of the violent encounter, he believed she learned about it from the people around. "Sitoy" explained that the dispute must be the reason why the Latojas bore a grudge against him. He also claimed that he was arrested not in connection with this case but for vagrancy last 12 May 1996 and that from 21 December up to the time of his arrest he never left home, and that although he and Estelita frequently met, no confrontation ever ensued between them.[6]

Accused Alexander Gulane anchored his defense on mistaken identity. He claimed that he could not have participated in the killing because he just arrived from Catbalogan, Samar on 24 February 1996. Prior thereto, he had never set foot in Manila. He must have been mistaken for his first cousin Armando Gulane who bore a striking resemblance to him. While confined in the Quezon City Jail he learned that he was being implicated for the murder of Leo when several persons went to see him and looked for Armando Gulane but he insisted to them that he was Alexander and not Armando. He was certain that Armando was involved in the killing because he overheard one of his companions talking about Armando's participation in the crime.[7] But Alexander failed to corroborate his allegations.

The trial court did not give credence to the sagging defense of the accused. Estelita Latoja, mother of the victim, clearly and positively identified Gerry Silva alias "Sitoy" and Alexander Gulane alias "Alex or Armando" as two (2) of the three (3) persons who shot and killed her son Leo Latoja. She described in detail how her son was gunned down by the accused. As against this positive identification, the denial interposed by the accused, their claim of mistaken identity, and the imputation of an evil motive on the part of Estelita cannot prevail even if the lone witness in the shooting of Leo was his own mother. In qualifying the crime to murder, the trial court reasoned out -[8]

> Before Leo was actually and suddenly shot, he was on a tricycle on his way to work having just received transportation money from his mother. This would make Leo unaware of the attack that will be made on him and, therefore, he was rendered unprepared for any defense he may possibly put up to repel the same. This would amount to treachery.
>
> The hour of the morning when Leo was attacked (sic), which Latoja described to be just after day break, would preclude an accidental encounter between Leo and his assailants. It would have required planning on the part of the assailants on when and how they would kill Leo. This would account and would work for the presence of evident premeditation and conspiracy in this case.

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At the vortex of the controversy is the credibility of the lone witness for the prosecution.

Accused-appellants characterize as too conjectural the testimony of Estelita Latoja implicating them as the authors of the crime. They argue that if indeed she knew the identities of the accused even prior to the commission of the crime, why then did she not reveal the same when she reported the incident to the police authorities?

Attention is drawn to the police blotter where the alleged felons were referred to merely as "three (3) unidentified malefactors with unknown firearm" or "unknown attacker armed with unknown handgun" (italics supplied). Corollarily, they contend that the unexplained delay in revealing the identities of the accused, which was made on 12 March 1996 or almost three (3) months after the commission of the crime, is undoubtedly repugnant to the common experience in the ordinary course of human behavior. Further, they argue that had Estelita really recognized them as the perpetrators of the crime she would have immediately and spontaneously revealed their identities when she reported the crime as would be expected of her. Hence, their belated identification is just an afterthought born of a prejudiced mind that cannot be the basis of conviction.

We do not agree. This Court has ruled that official records, as a police blotter, should not be given undue significance or probative value for they are usually incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries. Entries in a police blotter are merely prima facie evidence of the facts stated therein but they are not conclusive.[9] More importantly, Estelita explained that although they were neighbors, she knew accused-appellants only by their aliases. At the time the blotter was being prepared, the police said that they would just put the aliases "here" (referring to the police blotter).[10] This statement suggests that she was able to identify accused-appellants by their aliases but this fact was, for reasons difficult to divine, omitted by the police in their written report. Moreover, at the time she went to the authorities for relief Estelita was the picture of a grief-stricken woman. Perhaps the Court can just imagine the mental and emotional turmoil she was undergoing after having seen her son mercilessly shot in cold blood in her presence. Then she had to take, all by herself, the fallen body of her son to the hospital and later reported the matter to the police. Her statements, quite understandably, would not be all that coherent. At any rate, we cannot lose sight of the fact that she positively identified accused-appellants as the perpetrators of the dastardly act. They were neighbors for five (5) years. The killing was committed in broad daylight, while the witness, the victim and the three (3) felons were face to face at very close quarters. All these would preclude any mistake in the identity of the assailants, hence the defense of denial must necessarily fail.

Furthermore, Estrelita testified that accused-appellants were her neighbors for the past five (5) years, which fact was never disputed by the defense. They were indeed her neighbors whom she saw every so often idly passing their time away in the street corners and alleys but never had the opportunity to get more acquainted with them as to know their complete names. Such is the reality of urban life where, unlike in the barrio where everybody knows everybody else, interpersonal relations have become very impersonal and have been reduced to mere casual greetings. It is therefore not out of the ordinary for Estrelita, a cityfolk not to know by name accused-appellants who were her neighbors; yet this does not mean that she can no longer recognize them. The fact remains that Estrelita was able to positively identify accused-appellants in open court and consistently pointed her fingers at them as the killers of her son.

The trial court reasoned that the killing was attended by treachery because the suddenness of the attack caught Leo offguard thus preventing him from putting up any defense. We ruled in a litany of cases that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. The same degree of proof to dispel any reasonable doubt is required before treachery may be considered either as an aggravating or qualifying circumstance. Further, treachery must be based on some positive conclusive proof and not only upon hypothetical facts or on mere suppositions or presumptions.[11]

The trial court erred when it presumed that the killing was qualified by treachery although the record shows that the witness did not see the commencement of the assault.[12] Estelita testified that she noticed accused-appellants only after she heard the first shot -[13]

Q.

Madam Witness, you mentioned that your son immediately before the shooting incident was with his wife?

A:

Yes, sir.

Q:

And while your son was with his wife in the tricycle or pedicab do you know where the accused then?

A:

No, sir.

Q:

In what stage of the incident when you first noticed Silva?

A:

Upon hearing the first shot.

Q:

What about Gulane?

A:

I saw them together.

Q:

How about Gilbert?

A:

The three were together.

Q:

So, in other words, you first noticed them when you heard the first shot?

A:

Yes, sir.

Q:

And do I get it right from you that you have not seen them prior to the first shot?

A:

No, sir.

In her earlier testimony, Estelita explained that it was the first shot that prompted her to turn her head and it was

only then that she saw Gerry Silva pointing his gun at her son[14] ho was already bloodied.[15] These statements are fraught with possibilities.

Nagging doubts would crop up as to how the three (3) assailants started the assault considering that there was an interval of time from the moment Estelita's back was towards Leo until she heard the first shot. Before that she did not notice the presence of accused-appellants. One can argue that between the time when Estelita's back was turned from the victim after she had taken about two (2) steps away and the first shot, there was a lapse of more or less four (4) seconds. No other logical conclusion then could be drawn but that the attack was sudden and unexpected. But this is not that simple. Where all indicia tend to support the conclusion that the attack was sudden and unexpected but there are no precise data on this point, treachery cannot be taken into account. It can in no way be established from mere suppositions, drawn from the circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery.

In the same manner, evident premeditation cannot be appreciated to qualify the killing to murder in the absence of direct evidence of the planning and preparation to kill or when the plan was conceived.[16] This the trial court overlooked when it observed, as earlier mentioned, that the time when the attack was made, being after daybreak, precluded an accidental encounter between Leo and his assailants. It would require planning on the part of the assailants on when and how they would accomplish their criminal intent.[17] Hence the presence of evident premeditation according to the trial court.

The reasoning of the trial court is oft-tangent and cannot be sustained. There is simply no causal connection between the time when the crime was committed, which was at daybreak, and the possibility of any accidental meeting between the protagonists. Premeditation cannot be appreciated if the evidence does not show when the plan to kill was hatched, or how much time had elapsed before it was carried out. There must be a basis for determining whether the accused had sufficient time between the inception of the plan and its fulfillment to dispassionately consider and accept its consequences.[18]The records do not reveal a jot of evidence showing the time that accused-appellants conceived the plan and made preparations to kill Leo Latoja. The mere fact that the victim was attacked just after daybreak cannot give rise to the presumption that the killing was premeditated. The finding by the trial court is merely an inference drawn from the surrounding circumstances of the case which is simply devoid of any factual mooring.

Where the attack was not treacherous, the number of aggressors would constitute only abuse of superiority. Thus considering that the victim when assaulted was unarmed, he was, therefore, no match to his three (3) adversaries who were all armed with handguns. Our jurisprudence is exemplified by the holding that where three (3) armed persons attacked the defenseless victim but there was no proof as to how the attack commenced and treachery was not proved, the fact that there were three (3) armed assailants would constitute abuse of superior strength.[19]

Absent the qualifying circumstance of treachery or evident premeditation in the killing of the victim, the crime committed can only be homicide, not murder. With the generic aggravating circumstance of abuse of superiority and the absence of any mitigating circumstance, the penalty for homicide, which is reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years, the same to be imposed in its maximum period the range of which is seventeen (17) years four (4) months and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum shall be taken from the penalty next lower in degree, which is prision mayor, the range of which is six (6) years and one (1) day to twelve (12) years, in any of its periods, while the maximum shall be taken from the maximum of the imposable penalty in view of the generic aggravating circumstance of abuse of superiority.

WHEREFORE, the Decision of the trial court appealed from is MODIFIED; instead of finding the accused guilty

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of murder, the same is reduced to homicide. Consequently, the accused-appellants Gerry Silva alias "Sitoy" and Alexander Gulane y Oledan alias "Alex" or "Armando" are declared guilty beyond reasonable doubt of of HOMICIDE with the generic aggravating circumstance of abuse of superiority. Both accused-appellants are sentenced to a prison term of six (6) years four (4) months and ten (10) days of prision mayor minimum as minimum, to eighteen (18) years two (2) months and twenty (20) days of reclusion temporal maximum as maximum. They are further ORDERED jointly and severally to pay the heirs of Leo Latoja the amounts of P50,000.00 as civil indemnity, another P50,000.00 for moral damages and P20,000.00 for actual damages. Costs against accused-appellants.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Decision penned by Judge Benjamin Aquino, RTC-Br. 72, Malabon, Metro Manila.

[2] TSN, 14 March 1997, p.3.

[3] Original Records, p. 24.

[4] Rollo, p. 8.

[5] TSN, 18 April 1997, pp. 1-4.

[6] Id., pp. 1-6.

[7] TSN, 25 April 1997, pp. 8-9.

[8] Rollo, p. 21.

[9] People v. Divina, G.R. Nos. 93808-09, 7 April 1993, 221 SCRA 209, People v. Apolinario, G.R. No. 97426, 3 June 1993, 223 SCRA 94, People v. Cordova, G.R. Nos. 83373-74, 5 July 1993, 224 SCRA 94.

[10] TSN, 29 November 1996, pp. 2-3.

[11] People v. Rivera, G.R. 101798, 10 May 1993, 221 SCRA 343.

[12] People v. Ocsimar, G.R. 104630, 20 February 1996, 253 SCRA 689; People v. Tiozon, G.R. No. 89823, 19 June 1991, 198 SCRA 368; People v. Cordero, G.R. No. 97229, 5 January 1991, 217 SCRA 1; People v. Salvador, G.R. No. 101215, 30 July 1998, 224 SCRA 819.

[13] TSN, 7 February 1997, p. 15.

[14] TSN, 15 November 1996, p. 10.

[15] Id., p. 15.

[16] People v. Salvador, G.R. No. 101215, 30 July 1998, 224 SCRA 819, People v. Estrella,G.R. Nos. 92506-07, 28 April 1993, 221 SCRA 543, People v. Buela, G.R. No. 92536, 8 November 1993, 227 SCRA 534, People v. Wenceslao, 212 SCRA 560, People v. Rodriguez, G.R. No. 90255, 23 January 1991, 193 SCRA 231, People v. Nerit, G.R. No. 77087, 23 May 1991, 197 SCRA 334.

[17] Rollo, p. 21.

[18] People v. Corpuz and Serquina, 107 Phil. 44. See People v. Diva, 25 SCRA 468, People v. Ardisa, No.

L-29351, 23 January 1974, 55 SCRA 245, People v. Remolete, No. L-28108, 27 March 1974, 56 SCRA 66, People v. Cardenas, 56 SCRA 631, People v. Guiapat, No.-L 35465, 31 May 1984, 129 SCRA 539.

[19] U.S. v. Santiago Lasada, 21 Phil. 287 (1912), U.S. v. Banagale, 24 Phil. 69 (1913).

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