PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS DOCTOLERO, SR., ACCUSED-APPELLANT.

G.R. No. 131866. August 20, 2001

Ponente: BUENA, J.

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BUENA, J.:

Carlos Doctolero Sr. appeals from the decision dated 10 September 1997 in Criminal Case No. 14735-R of the Regional Trial Court of Baguio City, Branch VI, finding him guilty beyond reasonable doubt of the crime of murder.

The information against Doctolero states-

> "That on or about the 20[th] day of November, 1996, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously shoot one VICENTE GANONGAN JR. with a gun, thereby inflicting upon the latter gunshot wounds of the trunk which caused hemorrhage, and as a result thereof, the said Vicente Ganongan, Jr. died.
>
> "That in the commission of the offense the qualifying aggravating circumstance of treachery attended the same considering that the accused suddenly attacked the victim who did not have any means to defend himself because of the suddenness of the attack.
>
> "CONTRARY TO LAW."[1]

Upon arraignment, Doctolero entered a plea of not guilty. Thereafter, trial ensued.

Prosecution evidence showed that on November 20, 1996 at around 7:00 in the evening, Vicente Ganongan Jr. and Roderick Litorco went to their friends' boarding house on Honeymoon Road, Baguio City. Thereat, Vicente Ganongan, Roderick Litorco, Regie Daodaoan, Rex Tabanganay, Jeffrey Alimani and Florencio Dagson agreed to drink gin in Sangatan Store, which is about 20 meters from the boarding house. After two (2) hours, the group decided to go home. They went down Honeymoon road towards Rimando road to get a taxi for Litorco. Upon noticing that Litorco could not carry himself, they decided to bring him to their boarding house. Dagson assisted Litorco and walked ahead of Ganongan, Daodaoan, Tabanganay and Alimani. As the latter four neared the Garcia store along Honeymoon road, Carlos Garcia, with three companions, told them to stop, pointing a gun at them. Hearing the commotion, Dagson who was walking about 5 to 7 meters ahead with Litorco rushed to the boarding house and sought help. When Dagson came back, he was with Oliver Alimani, Arman Alimani and Dexter Daggay. When they arrived, they saw Garcia pointing a gun at the group of Ganongan, Daodaoan, Tabanganay and Jeffrey Alimani. Oliver Alimani approached Garcia who in turn pointed his gun at Oliver and identified himself as barangay kagawad. At this time, Carlos Doctolero Sr. was standing at the edge of Honeymoon road. He then put his arm over Daodaoan's shoulder. Daoadaoan shoved Doctolero's hand and retreated. Doctolero stepped back and fired twice at Daodaoan but missed. Tabanganay asked Daodaoan if he was hit and upon answering that he was not, Tabanganay shouted at his friends to run. When Ganongan turned around to run, Doctolero fired at

him, hitting him twice. Oliver Alimani came to Ganongan's aid when the latter yelled that he was hit. Thereafter, they hailed a taxi and rushed Ganongan to Saint Louis University Hospital where he expired.

In his defense, accused-appellant denied the accusation against him. He testified that while he was in his house watching a television program, the telephone rang. His wife answered the phone and it turned out that it was Carlos Garcia's wife asking for help. When he opened his window and looked outside, he saw several men running and shouting. Sensing trouble, he went out, took his licensed handgun and tucked it in his waist. His wife followed. Arriving at the scene of the incident, he saw the group of young men, drunk, shouting and holding stones poised to strike at the group of Carlos Garcia. He tried to pacify the contending parties but the group of young men did not heed his plea to stop the trouble and instead advanced towards him with stones held in their hands. He then pulled his gun and fired a warning shot directed upwards. The group of men continued to approach him. Thus, he was forced to fire another warning shot directed towards the ground. As the group of young men approached him, he retreated and his right foot slipped into the canal at the edge of the road where he fell. The handgun that he was holding fell to the ditch. At this juncture, he heard two (2) more shots coming from the direction of Carlos Garcia. Thereafter, he declared that a taxi coming from upper Honeymoon road passed by. Upon reaching the Garcia store, one of the passengers shouted and blamed Garcia in shooting one of their companions. He claimed that he confronted Garcia about what he heard from the passengers of the taxi but Garcia told him just to ignore what he heard. After the incident, he proceeded to Garcia's house. After a while, he went home and entered through the back door of his house. He cleaned his gun, threw the spent shells, changed his soiled clothes and narrated to his wife what happened. After some time, both he and his wife fell asleep.

As aforestated, accused-appellant was convicted of murder after appreciating the aggravating circumstance of treachery. He was sentenced to suffer the penalty of reclusion perpetua and was ordered to indemnify the heirs of Ganongan the amounts of P50,000.00 as civil indemnity, P227,808.80 as actual damages, and P300,000.00 as moral damages plus costs, to wit-

> "WHEREFORE, the Court finds the accused Carlos Doctolero, Sr. guilty beyond reasonable doubt of the offense of Murder, qualified by treachery defined and penalized under Article 248 of the Revised Penal Code as charged in the Information, and hereby sentences him to Reclusion Perpetua; to indemnify the heirs of deceased Vicente Ganongan, Jr. the sum of P50,000.00 as indemnity for his death; the sum of P227,808.80 as actual damages for expenses incurred for hospitalization, doctor's fees, funeral expenses, vigil and burial as a result of his death, and P300,000.00 as Moral damages for the pain and mental anguish suffered by the heirs by reason of his death, all indemnifications being without subsidiary imprisonment in case of insolvency, and to pay the costs.
>
> "The accused being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.
>
> "The Court directs that the Prosecutor's Office of Baguio conduct a preliminary investigation on the participation of Carlos Garcia in the shooting incident resulting in the death of Vicente Ganongan, Jr. on November 20, 1996, informing the latter accordingly of the same and if warranted by the evidence, to file the appropriate Information.
>
> "SO ORDERED."[2]

In his appeal, accused-appellant contends that the trial court erred - [3]

> "I.
>
> in disregarding the physical, testimonial and documentary evidence which, if appreciated, would have exonerated the accused.

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"II.

in anchoring its decision entirely on and giving full credence to the testimony of the prosecution's purported eyewitness.

"III.

in giving primacy to, and basing its decision, on supposed weakness of the defense.

"IV.

in disregarding the unrebutted evidence of part of res gestae.

"V.

in completely disregarding the testimony of defense witness Zoilo Estolas.

"VI.

in disregarding the unrebutted evidence on the character and reputation of the accused.

"VII.

in finding the existence of the aggravating circumstance of treachery.

"VIII.

in convicting the accused and disregarding the principle of proof beyond reasonable doubt.

Accused-appellant professes his innocence and seeks an acquittal on the ground that the prosecution failed to prove his guilt beyond reasonable doubt. He maintains that it was Carlos Garcia who fired the fatal shots.[4]

Records reveal that Oliver Alimani[5] and Jeffrey Alimani[6] positively identified accused-appellant as the one who shot Ganongan when the latter was about to run. They were present at the incident and saw at close range when accused-appellant fired his gun. Their testimonies are consistent with the findings of the medico-legal officer who conducted the autopsy on the cadaver that Ganongan sustained four (4) gunshot wounds, consisting of two (2) points of entry and two (2) points of exit[7] such that the first gunshot wound was the one located at the back.[8] Notably, a witness' testimony which is corroborated by the autopsy report is credible.[9] Accused-appellant insists that the trial court erred in disregarding the testimonies of disinterested witnesses who corroborated his defense. He stakes his appeal on the assertion that the testimonies of prosecution witnesses were biased and inconsistent which should not be relied upon. These allegations of inconsistent testimonies - that it was impossible for Litorco, being so drunk to be carried by just one man; that Litorco and Dagson, being so drunk, could not walk faster than the rest of his friends who were following, about 5 to 7 meters, behind;[10] that Dagson was inconsistent on the place where he left Litorco, whether in Sangatan store or in the boarding house;[11] or the incompatible testimony that the boarding house was lighted or not when Dagson arrived and woke up his friends[12] - merely refer to minor details which do not negate the fact that the prosecution witnesses saw the fatal shooting. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witness where there is consistency in relating the principal occurrence and positive identification of the assailant.[13] As a whole, prosecution witnesses were unanimous in identifying accused-appellant as the person who killed Ganongan.

Accused-appellant avers that the trial court erred in not giving probative weight to the testimony of defense witness Zoilo Estolas who testified that -

"xxx he was in front of his store smoking cigarette at about 9:00 in the evening of November 20, 1996. His

> store is between Garcia's Store and Annabel's Store. While smoking, he heard chasing, shouting and stoning about 15 meters away from him. They were familiar to him as the group of Kalinga students and they were chasing two male persons who went down to the house of Engr. Genove. He did not recognize the two male persons being chased. The group of Kalinga students were stopped by Garcia, a barangay kagawad, and his three companions. Garcia shouted, `You stop and raise your hands,' while pointing a gun at them. And the group of young men answered back., `Why? What is our fault? Why do you point your gun at us?' And Garcia insisted saying he is a barangay official. At that time the young men were noisy and in a drunken state. Suddenly, the 3 companions of Garcia engaged the young men in a street fight using fists and feet. The rumble lasted about two minutes when one of the group of Kalinga students ran away shouting, `I will call the police!' That was when the group of Garcia and the group of Kalinga students parted ways. He saw again chasing and running. He ran back to his store and it was then that he heard two successive gunshots. He did not see who fired the successive gunshots. But he looked towards the source of the gunshots and saw Doctolero and Garcia each holding a gun. And it was then that the group of young men advanced towards Doctolero. The young men advanced towards Doctolero with their hands poised to throw stones they were holding. Doctolero retreated and fell to the canal. It was then that Garcia fired his gun. Apprehensive, Estolas returned to his house. But while going towards his yard, he heard another burst of gunfire. He did not see anymore who fired the last shot. He saw Garcia and Doctolero going near the store of Garcia after which a taxicab came and one of the passengers shouted, `Vulva of your mother, Garcia. Why did you shoot one of our companions? We will be back.'"[14]

Proceeding from Estolas' testimony, even if admitted, will not reinforce the defense of denial advanced by accused-appellant considering that he admitted that he did not see who actually killed Ganongan. Moreover, his testimony that he heard the passenger of the taxi shouting at Garcia and blaming him for shooting Ganongan suffers a fatal defect. It has been established that prosecution witnesses do not know Garcia and accused-appellant by name but merely refer to them as barangay kagawad. This, nonetheless, does not affect the admissibility of the identification because one need not identify the assailant by name. What is important is that he is positive as to the physical identification of the accused.[15] Prosecution witnesses declared that they could identify the person responsible in the shooting incident if ever they would see them again.[16] They were able to immediately identify accused-appellant on the basis of the photographs shown to them at the Barangay Affairs Office on November 21, 1996.

In sum, accused-appellant's appeal hinges on the credibility of the prosecution witnesses. The trial court found the eyewitness account to be spontaneous, consistent and credible.[17] Time and again, we have ruled that appellate courts will generally not disturb the assessment of the trial court on matters of credibility, considering that the latter was in a better position to appreciate the same, having heard and observed the witnesses themselves and observed their deportment, as well as their manner of testifying, during the trial.[18] We see no reason to depart from the well-entrenched doctrine that findings of facts of the lower court are accorded due respect and weight unless it has overlooked material and relevant points that would have led it to rule otherwise.[19] Accused-appellant's conviction was grounded on the strength of the evidence of the prosecution positively establishing his presence at the scene of the crime and identifying him as the one who fired the fatal shots. It is true that the prosecution witnesses are friends of the deceased. Even so, other witnesses, who are relatives and friends of the deceased, would not just indiscriminately impute the crime to anybody but would necessarily identify and seek the conviction of the real culprit to attain justice.[20] Relationship by itself does not give rise to the presumption of bias or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of the witness.[21] No ill motive was attributed to these witnesses that could make them falsely testify against accused-appellant.

The trial court concluded that treachery attended the commission of the crime and rationalizes in this wise -

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> "xxx, given the circumstances above discussed that at the time Ganongan was shot he was already on the run with his back turned towards Doctolero, there was no danger or risk to the latter when he fired at Ganongan. Nor was there any necessity for it for Ganongan was drunk, unarmed and on the run and could not possibly harm Doctolero. In that situation there was no way Ganongan could defend himself. He was not armed. He was drunk. He was running away. He could not see who was going to fire from behind him. He would not know to whom and what direction the shots will be fired. He cannot dodge or avoid the shots which he cannot see nor know when fired.
>
> "And since Honeymoon Road is an ascending road, literally Doctolero and Garcia had a turkey shot. Doctolero was like shooting turkey. Ganongan was a sitting duck. Firing once at Ganongan and the Kalinga students may be considered accidental even casual impelled by the moment's necessity. But firing at Ganongan once, twice, thrice, four times and even five times would indicate already a method deliberately adopted to pick anyone from the group to shoot at like in target practice. And if you consider that Doctolero and Garcia both fired their guns simultaneously if not in rapid succession as shown by the evidence, the treacherous manner in which Ganongan was shot can readily be appreciated in that the Kalinga students running away were being shot at like animals with the blazing guns of Doctolero and Garcia. There was completely no reason to shoot them as they were simply drunk, noisy and unruly but unarmed."[22]

After a close scrutiny of the records, we are not fully persuaded that treachery qualified the crime. Circumstances qualifying a killing to murder such as treachery must be proven as indubitably as the crime itself.[23] For treachery to be appreciated, two conditions must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the said means of execution be deliberately or consciously adopted.[24] In the instant case, the victim was shot at his back while attempting to run. While the initial shooting that hit Ganongan at his back appears to have been sudden and unexpected, suddenness of attack does not, of itself, suffice to support a finding of treachery, so long as the decision to kill was made at that instant and the victim's helpless position was accidental.[25] In the instant case, prosecution witness Florencio Dagson testified that he was walking ahead of his friends and he was not able to witness how the altercation started. The failure of the prosecution to present evidence as to the manner in which the altercation started precludes a finding that the killing was qualified by treachery.[26] Here, Dagson's attention was caught by the loud voices coming from behind and seeing his friends being stopped by a group of men, he hurriedly sought the help of his friends in the boarding house. Arriving at the scene, Jeffrey Alimani, Oliver Alimani and Florencio Dagson saw that both Carlos Garcia and accused-appellant were holding their respective guns. Significantly, they testified that accused-appellant fired at Ganongan. To establish treachery, the evidence must show that the accused has made some preparations to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself. A killing done at the spur of the moment is not treacherous.[27] What was clear was the fact that prosecution witnesses saw accused-appellant shot Ganongan. No more, no less. The prosecution failed to show by clear and convincing evidence that accused-appellant deliberately adopted such means of execution to ensure the killing of Ganongan. Any doubt as to the existence of treachery must be resolved in favor of the accused.[28] Hence, absent clear and convincing proof of treachery, accused-appellant can only be convicted of homicide.

Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. When there are neither aggravating nor mitigating circumstances, the penalty shall be imposed in its medium period.[29] Applying the Indeterminate Sentence Law and there being no modifying circumstance, the minimum of the imposable penalty shall be taken from the penalty next lower in degree, or more specifically prision mayor. Accordingly, appellant shall suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen years (14) years, 8 months and one (1) day of reclusion temporal, as maximum.

With respect to the damages awarded by the trial court, we deem it proper to reduce the award to P112,413.40

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representing funeral expenses, which were duly proven and covered by receipts. Expenses relating to the 9[th] day, 40[th] day and 1[st] year anniversaries cannot be considered in the award of actual damages as these were incurred after a considerable lapse of time from the burial of the victim.[30] With respect to the award of moral damages,[31] the same is reduced to P50,000.00 in accordance with existing jurisprudence.

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION that, instead of murder the Court finds accused-appellant, Carlos Doctorlero, Sr., guilty beyond reasonable doubt of HOMICIDE and imposes upon him an indeterminate prison term of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen years (14) years, 8 months and one (1) day of reclusion temporal, as maximum, and orders him to pay the heirs of Vicente Ganongan Jr., P112,413.40 as actual damages, P50,000.00 as civil indemnity, and P50,000.00 as moral damages plus costs.
SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Rollo, p. 13; records, pp. 1-2.

[2]Rollo, pp. 182-183; records, pp. 236-237.

[3] Rollo, pp. 87-88.

[4] Rollo, p. 102.

[5] TSN, March 31, 1997, p. 10.

[6] TSN, March 18, 1997, p. 27.

[7] TSN, March 31, 1997, pp. 49-50.

[8] Ibid., p. 51.

[9] see People vs. Molina, 312 SCRA 130, 134 [1999].

[10] Rollo, pp. 104 - 107.

[11] Ibid., pp. 108 - 110.

[12] Ibid., pp. 107 - 108.

[13] People vs. Molina, 311 SCRA 517 [1999].

[14] Records, pp. 218-219; Rollo, pp. 163-164; TSN, June 16, 1997, pp. 2-43.

[15] People vs. Heredia et. al, 311 SCRA 353 [1999].

[16] TSN, April 2, 1997, pp. 4-5.

[17] RTC decision, p. 20; Rollo, 166; records, p. 221.

[18] People vs. Gonzales, et. al, G.R. No. 106873, October 3, 2000.

[19] People vs. Domingo, et. al, 312 SCRA 487 [1999].

[20] People vs. Bautista, et. al, 312 SCRA 214, p. 227 [1999] citing People vs. Macagalang, 237 SCRA 299 [1998].

[21] People vs. Quilang, 312 SCRA 315 [1999].

[22] Ibid., pp.32-33; ibid., pp. 178-179; ibid.,pp.232-233.

[23] People vs. Aquino, et. al, G.R. No. 130613, October 5, 2000.

[24] People vs. Molina, 312 SCRA 130 [1999].

[25] People vs. Chua, 297 SCRA 229 [1998].

[26] Supra. at footnote 11.

[27] People vs. Salvador et. al, 279 SCRA 164 [1997].

[28] People vs. Hilot et. al, G.R. No. 129532, October 5, 2000.

[29] Article 64 of the Revised Penal Code.

[30] People vs. Mangahas, 311 SCRA 384 [1999].

[31] People vs. Salcedo et. al, 273 SCRA 473 [1997].

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