

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZALDY CASINGAL, ACCUSED-APPELLANT.

G.R. No. 132214. August 01, 2000

Ponente: PUNO, J.

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PUNO, J.:

Must a man be brought behind bars when no one saw him pull the trigger of the carbine that felled his fellowman?

In Criminal Case No. SCC-2411, the accused-appellant was charged with the crime of Murder in an Information which states:

"That on or about May 8, 1995, in Barangay Sawat, municipality of Urbiztondo, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously shoot one Diosdado Palisoc with a U.S. Carbine cal. 30 inflicting upon him the following injuries:

- Gunshot wound on the left chest

POE: 0.5 cm., anterior shoulder

POX: 0.5 cm. 5th ICS-L paravertebral line

- Hypovolemic shock

which caused the death of said Diosdado Palisoc as a consequence, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code:"[1]

In Criminal Case No. 2412, he was likewise charged with the crime of Illegal Possession of Firearm and Ammunition. The Information states:

"That on or about May 8, 1995, in Barangay Sawat, municipality of Urbiztondo, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) U.S. Carbine caliber 30 with ammunition, without first securing the necessary permit and license to possess the same, which he used in the commission of the crime of Murder.

Contrary to P.D. 1866."[2]

The accused pled not guilty to both crimes. Trial proceeded in due course.

The facts of the shooting incident are based mainly on the narration of prosecution witness Edgardo Mula Cruz. It appears that on the May 8, 1995 local elections, at about 8:15 p.m., Cruz was near the gate of Sawat Elementary School in Barangay Sawat, Urbiztondo, Pangasinan, waiting for Palisoc, the victim.[3] Palisoc went home to get food or "baon" for Cruz and himself.[4] Cruz was talking with his friends and facing the road when he saw Palisoc coming.[5] He heard a gunshot, and when he turned his head towards its direction, he saw Palisoc facing

the accused and falling to the ground. Carrying a U.S. carbine caliber .30, the accused ran towards the house of one Francisca Galpao.[6] The area where the shooting incident took place was lighted by an electric bulb near the school gate. Cruz stood seven meters from both the victim and the accused whom he (Cruz) knew personally as they were neighbors.[7] After the accused left the crime scene, Cruz sought assistance from the policemen assigned at the Sawat Elementary School for the elections.[8] One of the policemen brought Palisoc to the Virgen Milagrosa Medical Hospital.[9] Palisoc expired in the operating room, the gunshot wound on his chest causing his death.[10] Cruz returned to the Sawat school to act as pollwatcher.[11] The following day, he executed an affidavit narrating the shooting incident.[12]

An investigation team was dispatched to the crime scene where some bloodstains, a fired bullet caliber .30 and fired caliber .30 cartridge were found.[13] On May 9, 1995, the accused was arrested in the house of one Mimi Payaoan in Barangay Salavante, Urbiztondo, Pangasinan. On the same day, pursuant to a search warrant, one (1) carbine caliber .30 with serial number 5611988 with one long magazine and 30 rounds of live ammunition were found in the house of Francisca Galpao.[14] The firearm with the magazine and ammunitions, as well as the fired bullet and cartridge were submitted for ballistic examination conducted by Police Inspector Pascual G. Mangal-ip.[15]

Police Inspector Mangal-ip testified that the fired cartridge and slug found at the crime scene were the same with the cartridge and slug found in the house of Francisca Galpao and test-fired from the carbine submitted for ballistic examination. He concluded that the cartridge and slug found at the crime scene came from carbine caliber .30 with serial number 5611988.[16] Chief Inspector Theresa Ann Bugayong Cid also testified that the paraffin test on the presence of gunpowder nitrates on the hands of the accused and on said carbine caliber .30 yielded positive results.[17]

The version of the defense was presented through the sole testimony of the accused. He did not dispute that the victim was shot on the night of May 8, 1995 with the use of carbine caliber .30 with serial number 5611988.[18] Nor did he deny his presence at the crime scene.[19] He, however, pointed to another person as the triggerman.

The accused testified that on May 3, 1995, while in Baguio City, he received a letter from a certain Ernesto Payaoan, requesting him to go to Urbiztondo, Pangasinan to help in the local elections.[20] The accused obliged and arrived in Urbiztondo on May 7, 1995. He spent the night in the house of Francisca Galpao.[21] The next morning, Payaoan came and instructed the accused to clean carbine caliber .30 with serial number 5611988 and to fire it to test its condition. The accused did as instructed and then gave the firearm back to Payaoan.[22] He asked Payaoan why the gun was being tested and Payaoan revealed that he would kill Diosdado Palisoc. The accused tried to stop Payaoan as Palisoc was his second cousin, but to no avail.[23]

On May 8, 1995, at about 7:30 in the evening, the accused and Payaoan went to Sawat Elementary School. Payaoan brought the carbine with him.[24] When they saw Palisoc, Payaoan shot the victim and passed the firearm to the accused. He ordered the accused to run and bring the gun to the house of Francisca Galpao.[25] His story was reduced to an affidavit which he executed about seven (7) months after the shooting incident or on December 20, 1995.[26] On January 25, 1996, he executed another affidavit[27] retracting his December 20, 1995 affidavit. On February 13, 1996, he made another affidavit[28] recanting his second affidavit. The accused likewise claimed that while in detention in the Municipal Jail of Urbiztondo, Pangasinan, he confided to SPO1 Teofilo Garcia that it was Payaoan who killed Palisoc.[29]

Payaoan testified as a rebuttal witness. He declared that on May 7 and 8, 1995, he was at the Regional PNP Command on standby detail because they were on red alert for election duties.[30] At that time, he was a member of the General Services Group, PNP Recom 1, San Fernando, La Union. He buttressed his claim with a

certification that on May 6-9, 1995, he was in the camp vicinity in San Fernando, La Union for election duties.[31]

The prosecution likewise presented SPO1 Teofilo Garcia. He confirmed that the accused was a detention prisoner in the Municipal Jail of Urbiztondo, Pangasinan from May up to June 1995, but denied that the accused confided to him that it was Payaoan who shot Palisoc.[32]

The trial court found the accused guilty beyond reasonable doubt of both Murder and Illegal Possession of Firearm and Ammunitions.[33] Hence, this appeal with the lone assignment of error, viz:

“THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER AND VIOLATION OF P.D. 1866 DESPITE THE FACT THAT THE PROSECUTION FAILED TO SUBSTANTIATE HIS GUILT BEYOND REASONABLE DOUBT.”

Prefatorily, we shall discuss the applicable law. On June 6, 1997, Republic Act 8294 amended P.D. 1866 which codified the laws on illegal possession of firearms. Among its amendments was that if homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as a special aggravating circumstance.[34] The amendment meant: first, the use of an unlicensed firearm in the commission of homicide or murder shall not be treated as a separate offense, but as a special aggravating circumstance; second, as a single crime is committed (i.e., homicide or murder with the aggravating circumstance of illegal possession of firearm), only one penalty shall be imposed on the accused.[35]

In its Joint Decision, the trial court convicted the accused of murder and illegal possession of firearm and ammunitions. It stressed that R.A. 8294 cannot be given retroactive effect for it was enacted in 1997 while the crimes charged against the accused were committed in 1995. It held that to give R.A. 8294 retroactive effect would be prejudicial to the accused and violative of Art. III, Sec. 22 of the 1987 Constitution which provides that, "(n)o ex-post facto law or bill of attainder shall be enacted." [36]

We disagree. This Court has previously ruled that R.A. 8294 is favorable to the accused, and should thus be retroactively applied in the present case.[37] It was thus error for the trial court to convict the accused of two separate offenses, i.e., Murder and Illegal Possession of Firearm and Ammunitions. The crime for which the accused may be charged is murder, aggravated by illegal possession of firearm.

We now examine the evidence to determine the guilt of the accused. The accused makes much of the fact that no one saw him in the act of shooting. It is true that there was no eyewitness to the shooting of the victim, but the testimony of prosecution witness Cruz is sufficient to convict the accused as responsible for the death of Palisoc. He stated in his affidavit executed the day after the shooting incident, viz:

"Q.

Do you know who shot Diosdado Palisoc?

A.

Yes sir, Zaldy Casingal also resident of Barangay Salavante, Urbiztondo, Pangasinan.[38]

He likewise testified as follows:

PROS. SORIANO:

Q.

When he fell down, what did you do?

A.

I called up a police, sir.

Q.

Before you called up a police, could you tell this Honorable Court the direction where the shot came from?

A.

Yes, sir. When I turned my head where the shot came from, I saw Zaldy Casingal holding a carbine going to the house of Ating Galpaw (sic).

xxx

Q.

How were you able to recognize Zaldy Casingal whom you said was holding a carbine and proceeded (sic) to the house of Ating Galpaw (sic) after Diosdado Palisoc was shot?

A.

There was an electric bulb near the gate, sir.

Q.

How far were you to (sic) Zaldy Casingal when you saw him holding a firearm proceeding to the house of Ating Galpaw?

A.

About seven (7) meters, sir.

Q.

And how far were you to (sic) Diosdado Palisoc when he was shot?

A.

The same, sir.[39]

xxx

Q.

You mentioned Zaldy Casingal as a person whom you saw carrying a firearm/carbine after Diosdado Palisoc was shot, do you know this Zaldy Casingal personally?

A.

Yes, sir.

Q.

Why do you know him?

A.

He is our neighbor, sir.

Q.

If he is now in (sic) courtroom, will you please point to him?

A.

(Witness pointing to a man with a mustache, and when he asked his name he answered Zaldy Casingal).[40]

xxx

ATTY. VALDEZ:

Q.

You said that you did not actually see who shot Diosdado Palisoc, is that correct?

A.

Yes, sir.[41]

xxx

ATTY. VALDEZ:

Q.

After you saw Diosdado Palisoc shot, did you look to the direction where the shot came from?

A.

Yes, sir.

Q.

And you saw a person running, is that correct?

xxx

A.

There is sir, it was Zaldy Casingal bringing a gun.[42]

ATTY. VALDEZ:

Q.

When you said that you saw Zaldy Casingal bringing a gun, how far was he from the place where you were standing?

A.

At about seven (7) meters, sir.

Q.

You said that there was an electric bulb in the Sawat Elementary School, is that correct?

A.

Yes, sir.

Q.

And this electric bulb was installed inside the school room?

A.

It is in (sic) the gate, sir.

Q.

How far is this electric bulb, Mr. witness (sic)?

A.

It is about four (4) meters, sir.

Q.

And in the place where you saw Zaldy Casingal running with the gun, there was (sic) various obstruction on (sic) the illumination of that light, is that correct?

A.

None, sir, because it is a road."[43]

For the accused to be convicted of murder, he must be positively identified as the assailant of the victim. Positive identification requires essentially proof of identity and not per se an eyewitness account of the very act of committing the crime. A witness may identify an accused as the perpetrator of the crime by direct evidence, i.e., an eyewitness account of the commission of the crime. There are instances, however, when a witness may not have actually seen the very act of commission of a crime, but he may still be able to identify the accused as the perpetrator as when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. In this case, the positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to a fair and reasonable conclusion that the accused is the author of the crime to the exclusion of all others. Otherwise, if circumstantial evidence could not be resorted to in proving the identity of the accused when direct evidence is not available, then felons would go scot-free and the community would be denied proper protection.[44] The rules on evidence and jurisprudence sustain the conviction of an accused through circumstantial evidence when the following requisites concur: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused.[45]

In fine, it is not decisive that Cruz did not actually see the accused shoot the victim. But immediately after the victim was shot, Cruz saw the accused holding the carbine which felled the victim, and then accused ran towards the house of Francisca Galpao. The trial court noted in its decision that the testimony of Cruz was ". . . direct, frank, unfaltering and straightforward . . . His testimony bore 'the marks of truth and sincerity', having been delivered spontaneously, naturally and in straightforward manner."[46] It also found that there is ". . . nothing in the records which would show any base motive or vile reason on the part of the witness to falsely implicate the herein accused."[47] It is well-settled that where there is no evidence that the witness against the accused was actuated by any improper motive, and absent any compelling reason to conclude otherwise, his testimony will be given full faith and credit.[48]

Cruz's positive identification of the accused as the victim's assailant is corroborated by several pieces of circumstantial evidence. Immediately after Cruz heard a gunshot, he saw the accused carrying a U.S. carbine caliber .30 and running towards the house of one Francisca Galpaw. The day after the shooting incident, carbine caliber .30 with serial number 5611988 with one long magazine and 30 rounds of live ammunition of the same caliber were seized in the house of Francisca Galpao. The paraffin test conducted upon the seized carbine and upon the accused yielded positive results. The ballistic examination also showed that the fired cartridge and slug found at the crime scene were the same with the cartridge and slug that were found in the house of Francisca Galpao and test-fired from the seized carbine submitted for ballistic examination. These pieces of circumstantial

evidence point to the accused as Palisoc's assailant.

The defense's attempt to cast doubt upon the prosecution's theory by passing the buck to Ernesto Payaoan is futile for lack of supporting evidence. The accused's lone testimony that the supposed triggerman, Ernesto Payaoan, only handed to him the carbine used in killing the victim and that he accepted and ran away with it is not credible. As held in *People v. Maliput*,^[49] "far from bordering merely on the imaginary, captious or plainly being a possible doubt, any reasonable doubt must be nothing less than a fair doubt based on reason and common sense (emphasis supplied)."^[50] Certainly, it is beyond reason and common sense for the accused to have taken hold of the carbine in full view of the people near the crime scene mindless of the danger that it would incriminate him.

However, we hold that the evidence to prove treachery or alevosia which will qualify the killing to murder is insufficient. To prove treachery, the following must be shown: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.^[51] It is also the running case law that where treachery is alleged, the manner of attack must be proven. Without any particulars as to the manner in which the aggression commenced or how the act which resulted in the victim's death unfolded, treachery cannot be appreciated.^[52] In the case at bar, prosecution witness Cruz testified on what transpired immediately after the killing of the victim. He had no knowledge of the circumstances before the shooting and the shooting itself. There is therefore no proof that the victim had no opportunity to defend himself or to retaliate. Nor is there any evidence to show that the victim was unarmed. Even assuming *arguendo* that the attack is sudden, there is no evidence that the means of execution was deliberately adopted.^[53] The finding of the trial court that the accused shot the victim several times does not find support from the evidence on record.

Evident premeditation cannot likewise be appreciated. There is evident premeditation when the following facts are proven: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to his determination to commit the crime; and (3) the lapse of sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of his act.^[54] The trial court appreciated this aggravating circumstance based on the accused's testimony. A close scrutiny of the accused's testimony, however, will show that he testified that it was not him but Payaoan who planned to kill the victim and clung to his determination to kill, and that there was sufficient interval of time between the premeditation and the execution of the crime to allow Payaoan to reflect upon the consequences of his act. There is no proof whatsoever with respect to the accused's plan to kill the victim and when he conceived of such plan.

There being no circumstance to qualify the killing to murder, the accused should be convicted of homicide. The penalty imposed upon the accused should correspondingly be lowered to reclusion temporal. As there is no aggravating or mitigating circumstance, the proper imposable penalty is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the minimum term is anywhere within the range of prision mayor, or from six (6) years and one (1) day to twelve (12) years, and the maximum within the range of reclusion temporal in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.^[55]

We come now to the charge of illegal possession of firearm. As *aforediscussed*, the accused cannot be charged separately with this offense. It can only be treated as a special qualifying circumstance. Even then, the prosecution was not able to prove that the accused lacked the license or permit to own or possess the firearm. While the prosecution presented a photocopy of a certification issued by the PNP Firearms and Explosives Unit stating that the accused was not a licensed holder of a firearm of any kind and caliber,^[56] it failed to submit the original of the same. Rule 130, Sec. 3 of the Rules of Court provides:

"Sec. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a

document, no evidence shall be admissible other than the original document itself, except in the following cases. . .”

The subject certification does not fall under the exceptions. Hence, we cannot give any evidentiary value to the photocopy of the certification.[57] Neither did the prosecution present the testimony of a representative of the PNP Firearms and Explosive Unit to establish that the accused is not licensed to possess carbine caliber .30 with serial number 5611988. This omission is fatal to the prosecution.[58] In fine, the crime of the accused cannot be qualified as having been committed with an unlicensed, illegally possessed firearm.

Prescinding from these premises, we have to modify the pecuniary liabilities imposed by the trial court. As the accused is liable only for homicide, he cannot be ordered to pay a fine of P30,000.00. The award of exemplary damages cannot also be given. Under Art. 2230 of the Civil Code, "(i)n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." The evidence on record does not show any aggravating circumstance. We sustain the award of moral damages as the prosecution was able to prove that the victim's death caused the latter's family extreme grief, sleepless nights and loss of appetite.[59] Funeral and other related expenses are likewise adequately supported by the evidence on record.[60]

IN VIEW WHEREOF, the impugned Joint Decision is MODIFIED. The accused-appellant is found guilty of the crime of Homicide and sentenced to an indeterminate sentence of eight (8) years and one (1) day of prision mayor medium as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium as maximum. The trial court's award of P50,000.00 for civil indemnity, P20,000.00 for moral damages, and P25,000.00 for funeral and other related expenses is AFFIRMED.

SO ORDERED.

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

[1] Original Records, p. 1.

[2] Rollo, p. 10.

[3] Original Records, p. 4; TSN, April 16, 1997, p. 3.

[4] TSN, *supra*, pp. 3, 9.

[5] *Supra*, pp. 9-11.

[6] Original Records, p. 4; TSN, *supra*, pp. 4-5.

[7] *Ibid.*; TSN, *supra*, p. 5.

[8] Original Records, p. 4; TSN, *supra*, p. 14.

[9] TSN, November 21, 1996, p. 31; Original Record, p. 5; Exhibit "L".

[10] TSN, January 15, 1997, pp. 43-44.

[11] TSN, April 16, 1997, p. 14.

[12] Original Records, p. 4.

- [13] TSN, September 26, 1996, pp. 4-6.
- [14] Id., pp. 9, 14.
- [15] TSN, October 5, 1995, p. 5.
- [16] Id., pp. 15-16.
- [17] TSN, September 5, 1996, pp. 7-10.
- [18] TSN, June 18, 1997, pp. 11-13.
- [19] Id., pp. 14-15.
- [20] TSN, July 4, 1997, pp. 2-3; June 18, 1997, p. 10.
- [21] TSN, June 18, 1997, pp. 10-11.
- [22] Id., pp. 11-14.
- [23] Id., p. 16.
- [24] TSN, July 4, 1997, p. 10.
- [25] Id., pp. 10-11.
- [26] Original Records, p. 487; Exhibit “2”.
- [27] Original Records, p. 488; Exhibit “3”.
- [28] Original Records, p. 489; Exhibit “4”; TSN, June 18, 1997, p. 21.
- [29] TSN, July 4, 1997, p. 12.
- [30] TSN, August 19, 1997, pp. 3-4; August 8, 1997, pp. 9-10.
- [31] Original Records, p. 512; Exhibit “R”; TSN, August 19, 1997, pp. 3-4.
- [32] TSN, August 8, 1997, p. 3.
- [33] Joint Decision, Regional Trial Court, Judge Bienvenido R. Estrada, presiding; Rollo, pp. 29-37.
- [34] People v. Castillo, G.R. Nos. 131592-93, February 15, 2000, p. 5, citing R.A. 8294, sec. 1, par. 3.
- [35] Id., p. 6, citing People v. Molina, 292 SCRA 742, 779-783 (1998).
- [36] Rollo, p. 37; Joint Decision, p. 9.
- [37] People v. Castillo, supra note 34, p. 6, citing Revised Penal Code, art. 22.
- [38] Original Records, p. 4; Exhibit “P”.
- [39] TSN, April 16, 1997, pp. 4-5.
- [40] Id., pp. 6-7.
- [41] Id., pp. 13-14.
- [42] Id., pp. 19-20.
- [43] Id., p. 21.

[44] *People v. Gallarde*, G.R. No. 133025, February 17, 2000.

[45] *Id.*, p. 8, citing Sec. 4, rule 133, Rules of Court; *People v. Abrera*, 283 SCRA 1 (1997).

[46] *Rollo*, p. 33; Joint Decision, p. 5.

[47] *Ibid.*

[48] *People v. Dacibar, et al.*, G.R. No. 111286, February 17, 2000, citing *People v. Solis*, 291 SCRA 529, 539 (1998).

[49] 252 SCRA 519 (1996).

[50] *Id.*, p. 528.

[51] *People v. Aquino*, G.R. No. 128887, January 20, 2000, citing *People v. Hubilla*, 252 SCRA 471, 481 (1996); *People v. Realin*, G.R. No. 126051, 21 January 1999.

[52] *People v. Rios*, G.R. No. 132632, June 19, 2000, citing *People v. Nalangan*, 336 Phil. 970, 975 (1997).

[53] *People v. Geguira, et al.*, G.R. No. 130769, March 13, 2000.

[54] *People v. Virtucio, Jr.*, G.R. No. 130667, February 22, 2000, citing *People v. Armando Sarabia*, G.R. No. 106102, October 29, 1999.

[55] *People v. Geguira*, *supra* note 53, pp. 25-26.

[56] Original Records, p. 456; Exhibit “K”.

[57] See *People v. Dismuke*, 234 SCRA 51 (1994), p. 60 and *Bacaltos Coal Mines, et al. v. Court of Appeals*, 245 SCRA 460 (1995), pp. 474-475.

[58] *People v. Cortez, et al.*, G.R. Nos. 131619-20, February 1, 2000, citing *Mallari v. Court of Appeals*, 265 SCRA 456 (1996), citing *People v. Solayao*, 262 SCRA 255, 261-265 (1996) and *People v. Tiozon*, 198 SCRA 368 (1991).

[59] TSN, February 19, 1997, p. 8.

[60] *Id.*, pp. 4-5; Exhibit “M-2”.

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