PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO OJERIO, FREDDIE SEQUIG AND GERARDO OJERIO (AT LARGE), ACCUSED, CONRADO OJERIO, ACCUSED-APPELLANT.

G.R. No. 132320. September 07, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Pangasinan, Branch 45, convicting accused-appellant of the crime of Murder in Criminal Case No. U-8141, and sentencing him to suffer the penalty of Reclusion Perpetua.

Accused-appellant was charged in two separate informations for the crimes of Murder and violation of Presidential Decree No. 1866 (Illegal Possession of Firearms). Upon arraignment on October 6, 1995, accused-appellant pleaded not guilty to both charges. On August 22, 1997, the trial court rendered a decision, acquitting accused-appellant of the charge of violation of Presidential Decree No. 1866, but convicting him of murder.

The information in Criminal Case No. 8141, for the crime of Murder, states:

> That on or about the 14[th] day of November, 1993, in the evening, at barangay Narra, San Manuel, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with long firearms, conspiring, confederating and mutually helping one another, with deliberate intent to kill, taking advantage of nighttime and superior strength, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously, attack, assault and shoot ROMEO MARCELO Y DELA CRUZ, inflicting upon him fatal wounds in the vital parts of his body which caused his instantaneous death, to the damage and prejudice of his heirs.
>
> Contrary to Art. 248, Revised Penal Code.[2]

The version of the prosecution culled from the eyewitness account of prosecution witnesses Carolina Marcelo (Carolina) and Jaime Diaz (Jaime), reveals that in the evening of November 14, 1993, in Barangay Narra, San Miguel, Pangasinan, Carolina was conversing with her husband, the victim, Romeo Marcelo, as well as with her mother, father, and grandfather, namely, Aida Diaz, Jaime Diaz, and Pedro Siquig, respectively. They were then in front of the kitchen door at the south portion of their house.[3] At around 7:00 o'clock of the same evening, their conversation was interrupted by the sound of footsteps on dried leaves and twigs emanating from the western side of their house. Instinctively, the victim who was then seated beside his wife, Carolina, stood up and took a few steps toward the direction of the noise. Thereafter, Aida Diaz and the victim focused their flashlights at the source of the disturbance. They saw accused-appellant Conrado Ojerio, Freddie Sequig and Gerardo Ojerio all armed with firearms. The victim was then more or less four to five meters, while Aida and Jaime were then approximately ten meters away from the culprits. At that instant, the assailants immediately fired their guns hitting the victim on different parts of his body which caused his instantaneous death. Thereafter, the assailants

left.[4] That same night, Jaime and Aida Diaz gave their sworn statements to the police, pointing to the three accused as the malefactors.[5]

The autopsy report conducted on the victim yielded the following results:

> A. External Findings:
>
> Head - Gunshot wound at the right infraa-uricular (sic) area about 0.5 cm in diameter (point of entry)
>
> Gunshot wound (point of exit) at the right temporal area, fracture of the temporal bone with eviseration (sic) of brain tissue
>
> Chest - Lacerated wound about 10 cm. in length at the left chest just 2 inches below the left clavicle
>
> Abdomen - Gunshot wound at the right hypochondriac region just 2 1/2 inches from the umbilicus, with eviseration (sic) of omentum
>
> B. Internal Findings
>
> Abdomen - Lacerated wound at the small intestine and stomach
>
> CAUSE OF DEATH
>
> Multiple gunshot wound on the head, chest and abdomen.[6]

Accused-appellant, a member of the Philippine Navy, with the rank of Fireman First, on the other hand, relies on the defense of denial and alibi. He claimed that he could not have committed the offense for which he was charged because when the crime was allegedly perpetrated on November 14, 1993, he was the guard on duty at the gate of the Naval Intelligence Security Force (NISF) at Fort Bonifacio, Makati, from 4:00 o'clock to 8:00 o'clock in the morning, and then from 4:00 o'clock p.m. to 8:00 o'clock p.m. of the same day.[7] To buttress his defense, Lt. Antonio C. Balses (Chief of the Administration and Personnel Division of the NISF), testified that according to the "Morning Report" of the NISF dated November 14, 1993, which bears the mark "NO CHANGE," the status of the 86 personnel assigned as Seaman First and Fireman First of the NISF, including accused-appellant, did not change. That is, "nobody went on leave, nobody was relieved; nobody was hospitalized; nobody went on forlough (sic), etc."[8]

On August 22, 1997, the trial court rendered the assailed decision, disposing as follows:

> WHEREFORE, in view of all the foregoing, the Court finds:
>
> IN CRIMINAL CASE NO. U-8141:
>
> The accused CONRADO OJERIO y PALIS, GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Art. 248 of the Revised Penal Code, the offense having been committed with the qualifying aggravating circumstance of treachery with the attendant generic aggravating circumstance of "taking advantage of superior strength" but the imposition of the death penalty is prohibited by Sec. 19 (1) of Art. III of the Philippine Constitution of 1986, hereby sentences him to suffer imprisonment of RECLUSION PERPETUA; to pay the heirs of the victim ROMEO MARCELO in the amount of P50,000.00 as indemnity; P80,000.00 as actual damages; and, P500,000.00 as moral damages, and to pay the costs.
>
> IN CRIMINAL CASE NO. U-8142:
>
> the accused CONRADO OJERIO y PALIS, NOT GUILTY of the crime of Violation of Presidential Decree No. 1866 and is hereby exonerated. The accused is hereby acquitted.
>
> Penultimately, it is said: "Dura lex, sed lex." meaning, "The law is harsh, but it is the law."

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SO ORDERED.[9]

Hence, the instant recourse. Accused-appellant, through counsel, contends that:

I

THE TRIAL COURT ERRED IN OVERLOOKING OR MISAPPRECIATING IMPROPER MOTIVES ON THE PART OF JAIME DIAZ AND CAROLINA DIAZ IN FALSELY IMPLICATING ACCUSED-APPELLANT IN THE DEATH OF ROMEO MARCELO.

II

THE TRIAL COURT ERRED IN OVERLOOKING OR MISAPPRECIATING MATERIAL INCONSISTENCIES IN THE TESTIMONIES OF JAIME DIAZ AND CAROLINA DIAZ WHICH ADVERSELY AFFECT THEIR CREDIBILITY.

III

THE TRIAL COURT ERRED IN OVERLOOKING OR MISAPPRECIATING THE DEFENSE OF THE ACCUSED-APPELLANT THAT HE COULD NOT HAVE KILLED ROMEO MARCELO.

IV

THE TRIAL COURT ERRED IN OVERLOOKING OR MISAPPRECIATING IMPORTANT FACTS AND CIRCUMSTANCES SHOWING THAT ACCUSED-APPELLANT IS NOT GUILTY OF THE CRIME CHARGED.[10]

The Public Attorney's Office, on the other hand, assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER, DESPITE EVIDENCE TO THE CONTRARY.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCONSISTENT AND CONFLICTING TESTIMONIES OF THE SURVIVING WIFE, CAROLINA DIAZ VDA. DE MARCELO, AND BIASED DECLARATIONS OF JAIME DIAZ, WHO HAS AN AX TO GRIND AGAINST THE ACCUSED-APPELLANT EVEN BEFORE THE DEATH OF THE VICTIM.[11]

Accused-appellant relies heavily on the defense of denial and alibi. He claims that he could not have committed the offense charged because he was on duty at Fort Bonifacio, Makati City when the crime occurred on November 14, 1993.

The contention is without merit. Lt. Antonio C. Balses, the witness presented by accused-appellant to prove the authenticity of the "Morning Report" of the NISF, merely testified on what appears on the report and not as to the fact that he actually saw accused-appellant at his post at the 3[rd] gate of Fort Bonifacio. Moreover, while accused-appellant claimed that some top navy officials support him, not one of them testified to back-up his defense of alibi.

Indeed, the defense of alibi is inherently weak.[12] Accused-appellant miserably failed to prove the requisite physical impossibility of his presence at the scene of the crime. Makati City, where accused-appellant claimed to be at the time of the commission of the crime, is only a 5-hour bus ride, or even less if by private transport, from Pangasinan. More importantly, in light of the positive identification of accused-appellant Conrado Ojerio, his

denial and alibi must utterly fail.

The conflicts cited by accused-appellant in prosecution witness Carolina Diaz's testimony as to her exact location are more apparent than real. If at all, the inconsistencies refer only to insignificant details which were fully explained when she made a drawing sketch of the shooting incident.[13] Thus, the trial court observed: "This matter of alleged inconsistent declaration of the witness Carolina Marcelo was later on cleared when it appeared in her further testimony that there was also a door of the kitchen in front of the house and that she was really at the cardinal direction when the flashlights of her husband and mother-in-law were focused to all the three (3) accused ready to fire their deadly weapons of death."[14] Evidently, the purported inconsistencies do not affect the substance of Carolina's testimony that she was then at the locus criminis and actually witnessed the shooting incident. Besides, Carolina cannot be expected to remember with utmost precision every tiny aspect of the incident, especially so that the events that led to the death of the victim unfolded in an alacritous progression.

Then too, there was no delay or vacillation in revealing the names of the perpetrators of the crime, as argued by accused-appellant. The records show that Aida Diaz and prosecution witness Jaime Diaz gave their sworn statements to the police, pointing to accused-appellant as one of the culprits, on the very same night that the victim was shot. Indeed, there was no time to prevaricate.

Accused-appellant likewise argued that Carolina Marcelo and Jaime Diaz are not credible witnesses because they have an ax to grind, so to speak, against him. The long standing feud between them which led accused-appellant to file a frustrated murder case against Jaime Diaz, allegedly renders the latter and his daughter, Carolina, as incredible and unreliable witnesses.

The arguments are far from persuasive. It is well settled that where the issue touches on the credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, unless some facts or circumstances that may affect the result of the case have been overlooked.[15] Having had the opportunity to observe the witnesses' demeanor and deportment at the witness stand, as well as the manner in which they gave their testimonies, trial courts are in a better position to discern if a witness is telling the truth of not.[16]

A careful review of the pertinent records shows no cogent reason to deviate from the conclusions of the trial court as to the prosecution witnesses' credibility. Hence, its findings must be accorded full faith and credence.

The trial court correctly appreciated the qualifying circumstance of treachery. Accused-appellant and his companions' swift and unexpected attack on the victim, who was then unarmed, clearly manifests a consciously adopted means in executing the crime without risk to themselves arising from the defense which the victim may be able to put up. The victim was obviously taken aback and completely rendered defenseless by the sudden attack of accused-appellant and his cohorts.[17]

As for the aggravating circumstance of abuse of superior strength, the same should not have been considered by the trial court inasmuch as said aggravating circumstance is absorbed by treachery.[18]

The penalty for murder at the time of the commission of the crime on November 14, 1993, was reclusion temporal in its maximum period to death. There being neither aggravating nor mitigating circumstances attendant in the malefaction sued upon, the penalty should be imposed in its medium period, i.e., reclusion perpetua.

With respect to the civil liability of accused-appellant, the award of P80,000.00 as actual damages should be modified, considering that only the amount of P10,000.00 for funeral expenses is supported by a receipt.[19] There must be competent proof that actual or compensatory damages have been suffered and evidence of the actual amount thereof.[20] Moreover, the award of P500,000.00 moral damages should be reduced to P50,000.00. Moral damages are not intended to enrich the complainant at the expense of the accused and the same must not be

palpably and scandalously excessive so as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court.[21]

WHEREFORE, the Decision of the Regional Trial Court of Pangasinan, Branch 45, in Criminal Case No. U-8141, convicting accused-appellant Conrado Ojerio of the crime of Murder and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the deceased, Romeo Marcelo, the amount of P50,000.00 as indemnity ex delicto is AFFIRMED with the MODIFICATION that the actual and moral damages be reduced to P10,000.00 and P50,000.00, respectively.

SO ORDERED.

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

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[*] Sometimes spelled as Siquig in the records.

[1] Penned by Judge Joven F. Costales.

[2] Rollo, p. 18.

[3] TSN, October 14, 1994, pp. 3-7.

[4] Ibid., October 26, 1994, pp. 7-11 and August 22, 1994, p. 4.

[5] Records, pp. 18-19.

[6] Exhibit "B", Records, p. 17.

[7] TSN, June 20, 1997, pp. 3, 6-7, and May 14, 1997, p. 10.

[8] Ibid., May 14, 1997, pp. 10-12.

[9] Rollo, pp. 89-90.

[10] Rollo, p. 105.

[11] Rollo, p. 198.

[12] People v. Pontilar, Jr., 275 SCRA 338, 351 [1997].

[13] Exhibit "C", Records, p. 104.

[14] Rollo, p. 77.

[15] Jacobo v. Court of Appeals, 270 SCRA 270, 283 [1997]; citing People v. Molina, 213 SCRA 52 [1992].

[16] People v. Alimon, 257 SCRA 658, 669 [1996].

[17] People v. Suplito, 314 SCRA 493, 503-504 [1999]; citing People v. Atrejenio, 310 SCRA 229 [1999]; People v. Verde, 302 SCRA 690 [1999]; and People v. Taclan, 308 SCRA 368 [1999].

[18] People v. Castro, 282 SCRA 212, 229 [1997]; citing 1 RAMON C. AQUINO, THE REVISED PENAL CODE, 376 [1987].

[19] Exhibit "E", Records, p. 530.

[20] People v. Nablo, 319 SCRA 784, 793 [1999]; People v. Lachica, 316 SCRA 443 [1999]; People v. Balisoro,

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307 SCRA 48 [1999]; and Del Rosario v. Court of Appeals, 267 SCRA 158 [1997].

[21] People v. Wenceslao, 212 SCRA 560, 569 [1992]; citing Ayala Integrated Steel Manufacturing Company, Inc., v. Court of Appeals, 200 SCRA 111 [1991]; and Filinvest Credit Corporation v. Intermediate Appellate Court, 166 SCRA 155 (1988).

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