PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDY RAQUIÑO, ACCUSED APPELLANT.

G.R. No. 132480. September 30, 1999

Ponente: MELO, J.

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MELO, J.:

Before us on automatic review is the decision of Branch 33 of the Regional Trial Court of the Third Judicial Region stationed in Guimba, Nueva Ecija in its Criminal Cases No. 1497-G and 1498-G finding accused-appellant guilty of two counts of murder and sentencing him to suffer the supreme penalty of death in both cases.

The undisputed facts are as follows.

On August 26, 1997, at around 8 o'clock in the evening, there was a dinner-party in the house of the victim Isidoro de Guzman. The banquet was in thanksgiving for the speedy recovery of the then sick Isidoro. Invited were close relatives, among them, the spouses Oscar Dumawal and Imelda Dumawal. Isidoro's son, Christopher, fetched their guests as they just lived in the neighborhood. On his return home, Christopher noticed three unidentified men sitting at their terrace. He invited them in but they declined. Isidoro, informed about the presence of the three men, asked Oscar to talk to them, but Oscar returned and told Isidoro that the men were asking for him. Isidoro then went out to meet them, followed by Oscar and Imelda Dumawal. Suddenly, Christopher, who was left behind in the kitchen, heard gunshots coming from the terrace. He immediately ran outside and saw Oscar Dumawal sprawled on the terrace floor while his father Isidoro and Imelda Dumawal were seriously wounded. He likewise saw the three men that he had earlier observed seated at their terrace, running away from their house. He ran after them but was not able to catch up with. He, however, noticed that all three were all carrying guns with them.

Oscar died on the spot. Isidoro was critically wounded and he died before reaching the hospital. Imelda, however, survived her serious wounds.

Two separate informations were filed against accused-appellant and his unidentified companions, John Doe and Peter Doe, charging them with two counts of murder for the deaths of Isidoro and Oscar, thusly:

CRIMINAL CASE NO. 1497-G

> That on or about the 26th day of August, 1997, in Cabaducan East, Nampicuan, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, then armed with unlicensed firearms, with intent to kill and by means of treachery and evident premeditation, availing of nighttime to afford impunity, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously shoot with said unlicensed firearms ISIDORO DE GUZMAN, resulting to the instantaneous death of said Isidoro de Guzman, per the autopsy report, to the damage and prejudice of the heirs of the victim.

CRIMINAL CASE NO. 1498-G

> That on or about the 26th day of August, 1997, in Cabaducan, East, Nampicuan, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, then armed with unlicensed firearms, with intent to kill and by means of treachery and evident premeditation, availing of nighttime to afford impunity, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously shoot with said unlicensed firearms one OSCAR DUMAWAL, resulting in the latter to sustain gunshot wounds that caused his instantaneous death, per autopsy report, to the damage and prejudice of the heirs of the victim.
>
> (pp. 47-48, Rollo.)

Only accused-appellant was arraigned because his two companions were then, as they remain to be, at large. Upon a plea of "not guilty", a joint trial ensued but during the pendency thereof, accused-appellant escaped from detention, and he was accordingly tried in absentia. Accused-appellant was not able to present any evidence for and on his behalf and has remained beyond the reach of the law up to the present time.

On January 2, 1998, the trial court rendered a judgment of conviction, disposing:

> WHEREFORE, in view of all the foregoing, the prosecution having established the guilt of the accused beyond reasonable doubt, this Court hereby sentences the accused RANDY RAQUIÑO to suffer the penalty of DEATH in Crim. Case No. 1497-G, for the death of Isidoro de Guzman, and to indemnify the heirs of the victim in the amount of P50,000.00 as damages. This Court likewise sentences the accused RANDY RAQUIÑO to suffer the penalty of DEATH in Crim. Case No. 1498-G, for the death of Oscar Dumawal and to indemnify the heirs of the victim in the amount of P50,000.00 as damages.
>
> (p. 45, Records; p. 50, Rollo)

On automatic review before this Court, the Public Attorney's Office, for and in behalf of accused-appellant, filed the appellant's brief contesting his conviction. Although, accused-appellant has not been recaptured, this Court deems it its duty to decide the case (Esperas case), and in the best interest of justice, finding as it does, some merit in the appeal.

In support of the first assigned error, accused-appellant contends that the trial court erred in holding that the shooting of Oscar Dumawal and Isidoro de Guzman was qualified by treachery and further aggravated by nighttime. He argues that no evidence was adduced to establish how the shooting actually started and much less how it was carried out. He says that it cannot be ascertained from the evidence that the shooting was sudden, nor that the assailant employed and consciously adopted means to ensure its execution (Rollo, p. 36). He likewise posits that there is nothing in the evidence that would remotely indicate that nighttime was specially and purposely sought to facilitate the commission of the crime.

In the second assigned error, accused-appellant contends that he was not positively identified by the witnesses as the assailant, there being no credible evidence to prove that he was the trigger-man. Further considering that neither was conspiracy adequately proved, according to him, he cannot be convicted of the crime charged.

In his third assigned error, accused-appellant faults the trial court with the error of convicting him of the crime charged despite the absence of evidence proving his guilt beyond all reasonable doubt.

We agree with accused-appellant in his first assigned error, but not in his second and third. By reason of their importance, the Court chooses to jointly discuss the second and third assigned errors before the first.

From a cursory examination of the trial court's decision, it appears that the judgment of conviction was based

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upon the victim's son, Christopher de Guzman's identification of accused-appellant as one of the three persons seated in the terrace of their house, waiting to talk to his father, the victim Isidoro de Guzman, and Christopher's further declaration that the same accused-appellant was one of the three persons who fled from the scene armed with guns right after he heard three gunshots (Record, p. 43). The trial court also found corroboration in the testimony of the other victims' daughter, Milagros Dumawal's positive identification of accused-appellant as one of the persons who shot to death her father, Oscar, Isidoro de Guzman, and wounded seriously Imelda (Ibid., p. 44).

Accused-appellant, on the other hand, contends that Christopher de Guzman could not have possibly positively identified him as the one who shot the victims because Christopher was admittedly in the kitchen from which area he could not see the terrace. When Christopher arrived at the terrace, all he saw were three individuals fleeing therefrom. He admittedly did not see the actual shooting incident. In the same manner, accused-appellant attacks the straightforward and categorical positive identification by Milagros Dumawal when she stated that, from the terrace of their house right next to the scene of the crime — a distance of barely 10 meters, she actually saw accused-appellant shoot at the victims. According to him, this was impossible because when she was alerted of the shooting by the gun reports, indicating that by that time, the actual shooting had already transpired. Her claim of witnessing the actual shooting was, therefore, a mere afterthought.

The Court observes that in insisting he was not positively identified and stressing that the witnesses could not have possibly seen him pull the trigger which caused the fatal shots upon the victims, accused-appellant equates positive identification with eye-witnessing the crime in the very act of its commission. We do not agree with accused-appellant on this point.

Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence, which herein accused-appellant refers to. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime, as for instance 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. This second type of positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only one fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.

If actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt (People vs. Danao 253 SCRA 146 [1996]). Even in the absence of direct evidence, conviction can be had if the established circumstances constitute an unbroken chain, consistent with each other and to the hypothesis that the accused are guilty, to the exclusion of all other hypothesis that they are not (People vs. Maliput, 252 SCRA 519 [1996]).

Under our rules on evidence, an accused may be convicted even if no eyewitness was present during the commission of the crime provided that enough circumstantial evidence is established by the prosecution to prove beyond reasonable doubt that the accused committed the crime (People vs. Lagao, Jr., 271 SCRA 51 [1997]). Circumstantial evidence may be sufficiently cogent to satisfy the judicial conscience, and may be as potent as direct testimony in tending to connect the accused with the commission of the offense (People vs. Eubra, 274

SCRA 180 [1997]). Resort to circumstantial evidence is essential when to insist on direct testimony would result in setting felons free and deny proper protection to the community. Circumstantial evidence, we repeat, is not a "weaker" form of evidence vis-à-vis direct evidence (People vs. Prado, 254 SCRA 531 [1996]). This is why there has to be this second kind of positive identification. It is positive just like that of the eyewitness' identification because it has to be as express, affirmative, and reliable like the identification by an eyewitness for it to form an integral part of the circumstantial evidence which may be the basis of a conviction of the person thus identified.

The pieces of evidence constituting the tapestry of circumstantial evidence, so to speak, taken together and not singly, point to the possibility that anyone, individually, or all of the three accused who came to the de Guzman residence, collectively, could be criminally liable for the death of the 2 victims and the serious wounding of the third victim.

The crucial issue to resolve, therefore, is whether or not conspiracy has been established by the evidence on record such that the act of one becomes the act of all. If the evidence on record does not support the finding of conspiracy, herein accused-appellant may indeed be acquitted on the ground of reasonable doubt. Unfortunately for accused-appellant, however, there is sufficient quantum of evidence on record to establish conspiracy in this case.

There is no doubt that accused-appellant had been positively identified as one of the 3 persons seen sitting by the terrace of the house of victim Isidoro de Guzman, and that these 3 individuals were there for a very specific purpose. When, initially, only Oscar Dumawal came out to the terrace to see them, they specifically asked for Isidoro de Guzman. Christopher de Guzman testified thusly:

FISCAL

Q. Having told your father that there are three persons in your terrace, what did your father do, if there was any?

WITNESS

A. At first, he did (not) go out, sir.

Q. And when he did not go out, what did you do next?
A. I told Manong Oscar that he should be the one to talk to those persons, sir.

Q. By the way, who is this Manong Oscar?
A. My cousin.

Q. What is his full name, will you please tell?
A. Oscar Dumawal, sir.

Q. He is one of the persons you fetched?
A. Yes, sir.

Q. Mr. Dumawal went out to confront the three persons?
A. Yes, sir.

Q. And when Mr. Dumawal went out to confront the three persons, what happened next?
A. He fetched my father, sir.

Q. What do you mean, he went back to your kitchen?
A. Yes, sir.

Q. What did he tell your father when he went back to your kitchen?
A. What they want to meet is my father, sir.

Q. Oscar Dumawal told your father he is the one being sought by the three persons?
A. Yes, sir.

(p. 8, tsn, November 18, 1997)

It is equally established that all three of the accused were physically present when the crime was committed. When Christopher de Guzman came out to the terrace immediately after three gunshots were fired, he saw these same three persons fleeing from the scene of the crime, each one of them armed with a gun. Testified thus of Christopher de Guzman:

FISCAL

Q After that, what did you do?

WITNESS

A. I ran after the three, sir.

Q. Were you able to catch up with them?
A. They were very fast, sir.

Q. Did you observe anything from them while you were running after them?
A. They were carrying guns.

Q. All three of them?
A. Yes, sir.

Q. The three of them?
A. Yes, sir.

(Ibid., p. 11)

Absent any cogent basis to discredit this straightforward and categorical testimony of Christopher, the Court has no alternative but to give credence to the same.

On the question of what constitutes sufficient evidence to establish conspiracy, we have time and again held that conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during, and after the commission of the crime (People vs. Alcantara, 254 SCRA 384 [1996]).

The fact that accused-appellant and his companions were each armed with a gun, that they were seated at the terrace of the house for Isidoro de Guzman waiting for him to come out, that all them were present and stuck it out with the group during the commission of the shooting, and that all of them fled from the scene together right after the victims were gunned down, could only point out to the inevitable conclusion that there was unity of purpose and concert of action, that there was conspiracy between the three of them to commit the felony or the crimes charged. If accused-appellant were not part of the conspiracy, why was he armed with a gun? Assuming that he was never aware of the plan of his two other companions to kill Isidoro and anybody else when the occasion called for it, why did he not stop his two companions when it became evident that they were going to shoot the victims? He could have acted in defense of the stranger by preventing his companions from pursuing their evil designs, anyway he was himself armed with a gun. Assuming that he did not have the courage to defend the poor victims from their assailants, why was it necessary for him to flee together with his two cohorts, when

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the instinct of any innocent by-stander would be to help the victims of the crime and not to flee therefrom. It is worthy to stress at this point that flight of an accused from the scene of the crime removes any remaining shred of doubt on his guilt (People vs. Cahindo, 266 SCRA 554 [1997]), that is, he was surely part of the conspiracy.

Finally, that accused-appellant was indeed part of the conspiracy is bolstered by the fact that after he was arraigned, he escaped from detention while the trial was in progress and has up to now, not surrendered himself to the authorities. It is doctrinally settled that flight of an accused is an indication of his guilt or of a guilty mind (People vs. Landicho, 258 SCRA 1 [1996]). The escape of accused-appellant is hardly consistent with a claim of innocence (People vs. Sarabia, 266 SCRA 471 [1997]).

Turning now to the first assigned error, we find merit in accused-appellant's contention that the killing cannot be considered to have been qualified by treachery, nor could it have been aggravated by nighttime.

The presence of treachery cannot be deduced from mere presumption or sheer speculation (People vs. Ganzagan, Jr., 247 SCRA 220 [1995]). It must be proved as fully as the crime itself (People vs. Esquilona, 248 SCRA 59 [1995]). For treachery to be appreciated, the prosecution must prove that at the time of the attack, the victim was not in a position to defend himself and that the offender consciously adopted the particular means, methods or form of attack employed by him (People vs. Maturgo, Sr., 248 SCRA 519 [1995]).

The circumstantial evidence on record does not prove that there was any conscious and deliberate effort on the part of the accused to adopt any particular means, method or form of attack to ensure the commission of the crime without affording the victims any means to defend themselves. The conclusion that there was treachery can hardly be gleaned from the fact that, in the present case, only three gunshots were fired at three victims, meaning, only one shot were fired at each of them. Even the evidence showing chest wounds resulting in massive bleeding which caused the death of the two victims, is by itself, not enough to establish the qualifying circumstance of treachery. In fine, absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victims unfolded, treachery cannot be appreciated (People vs. Patamama, 250 SCRA 603 [1995]).

Absent any qualifying circumstances, accused-appellant may be held liable only for 2 separate crimes of homicide, not murder, for the deaths of Oscar Dumawal and Isidoro de Guzman.

The crimes of homicide in the present case could not have been aggravated by the circumstance of nocturnity because nocturnity cannot be appreciated absent any showing that it had been purposely sought by the accused (People vs. Ronquillo, 247 SCRA 793 [1995]).

There being neither aggravating nor mitigating circumstances in the case at bar accused-appellant may only be sentenced to suffer the penalty of reclusion temporal in its medium period for each count of homicide. Applying the indeterminate sentence law, the minimum penalty should be anywhere within the range of prision mayor, in its medium period, up to reclusion temporal, in its medium period.

WHEREFORE, accused-appellant is found guilty beyond reasonable doubt of two counts of homicide and, for each count, imposed an indeterminate sentence of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. Civil indemnity in the amount of P50,000.00 each, is likewise awarded to the heirs of Oscar Dumawal and Isidoro de Guzman, respectively. No special pronouncement is made as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur. Panganiban, J., Please see separate opinion.

SEPARATE OPINION

PANGANIBAN, J.:

In my Separate Opinion[1] in People v. Esparas,[2] I wrote that the duty of this Court to review death penalty decisions where the appellant has escaped or jumped bail arises only after the appellant is re-arrested and taken back into the custody of the law; that is, after the Court resumes jurisdiction over his person. In other words, while I agree with the Court's holding that it has the mandatory duty to review cases imposing the death sentence,[3] such review, however, should be deferred until the escapees or fugitives[4] are re-arrested.

I submit that the jurisdiction of the Supreme Court over the person of a death convict who is at large is similar to that of a trial court over the accused who has not been arraigned. In the latter case, trial cannot proceed until the accused is arrested and enters a plea. The case is, in the meantime, "archived." Similarly, while the case of a person whom the trial court has sentenced to death is automatically elevated to this Court for review, the Court should defer such review if the convict has chosen to abscond. In this way, the Court does not avoid or forsake its mandatory duty. At the same time, the death convict does not enjoy a greater privilege than ordinary appellants who are deemed to have given up their appeal upon their escape from the fold of the law, and whose sentences (lower than death) are thereby deemed affirmed.

In immediately reviewing the cases of escaped death convicts, the Court is practically endowing a greater privilege to them than to ordinary fugitives, because the former could be benefited by penalties lower than reclusion perpetua, even acquittal, as a result of the automatic review of their cases. As demonstrated in the case at bar, Raquiño's death sentence has been reduced to mere imprisonment ranging from prision mayor medium to reclusion temporal medium, despite having made a mockery of the jurisdiction, authority, dignity and the processes of this very Court.

On the other hand, ordinary escapees, who may also deserve lesser penalties or acquittal, are forever doomed, because by their escape they are deemed to have abandoned their right to appeal.

This policy adopted by the majority unduly favors fugitives who have been sentenced to death by the trial court, as against one who has been sentenced to reclusion perpetua only. It encourages death convicts to escape from imprisonment because, anyway, their escape will not be interpreted as admission of their guilt. Besides, the Court will nevertheless review their conviction, and if it will be to their favor, they may chose to surrender; otherwise, they could remain fugitives.

With due respect, I submit that the course taken by the Court effectively countenances a trifling of the law and our judicial processes. Worse, it encourages death convicts to escape and to mock this Court and the judicial system as a whole. The instant case clearly illustrates the folly and impracticality of the majority's interpretation of the Court's mandatory review of death penalty cases.

IN VIEW OF THE FOREGOING, I vote to defer the Court's review of Randy Raquino's appeal and promulgation of Decision thereon until after the re-arrest of accused-appellant.

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[1] 260 SCRA 539, 552-554, August 20, 1996.

[2] Ibid.

[3] Pursuant to § 22 of RA 7659 and § 10, Rule 122 of the Rules of Court.

[4] In Rodriguez v. Comelec (259 SCRA 296, July 24, 1996), the Court defined fugitive from justice as one who flees after conviction to avoid punishment or who, after being charged, flees to avoid prosecution.

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