PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. INTOY GALLO @ PALALAM, A.K.A. ANICETO GALLO, ANTONIO PESEDAS, AND JOHN DOE, ACCUSED. INTOY GALLO @ PALALAM, A.K.A. ANICETO GA...

G.R. No. 133002. October 19, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated October 1, 1997, of the Regional Trial Court of Tacloban City, Branch 7, finding appellant, Intoy Gallo, guilty of murder. It sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amounts of P31,000 as moral damages and P50,000 as death indemnity, and to pay the costs.

Appellant was originally charged with Antonio Pesedas and one John Doe for murder. The Information reads:

> That on or about the 28[th] day of May, 1990, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other and with deliberate intent to kill, with treachery and evident premeditation, taking advantage of superior strength and nighttime, armed with armalite (M16) rifle, did then and there wilfully, unlawfully and feloniously attack, assault and shot one RONALD QUILLOPE, thereby inflicting upon said Ronald Quillope gunshot wounds, which caused his instantaneous death.
>
> CONTRARY TO LAW.[2]

Antonio Pesedas was arrested earlier. He pleaded guilty to the lesser offense of homicide and was duly sentenced. Intoy Gallo was arrested after six years in hiding. One John Doe, their co-accused, has remained at large.

After the arrest of appellant, he was arraigned and he pleaded not guilty. The basic facts of the case are as follows:

On May 28, 1990, at about 4:00 A.M., while prosecution witness BENITO TEJANO was tending his coffee shop located at Burgos St., Tacloban City, he saw Intoy[3] Gallo and Antonio Pesedas[4] approaching. They had arrived with a certain Marcial in a motorcycle parked at the other side of the street where Marcial waited. After a while, Intoy and Antonio crossed the street to conduct a search aboard a passenger bus bound for Borongan, Samar. Then the two went down and proceeded to a Toyota vehicle parked nearby. Asleep inside the Toyota was Ronald Quillope, a security guard of the Caltex gasoline station. Upon reaching the Toyota, Intoy and Antonio identified themselves as “PC Soscia”, a group of PC soldiers who inspected security guards at nighttime. Ronald Quillope immediately got up and out of the Toyota vehicle. Intoy hit him with the butt of an M16 rifle and took Ronald’s service pistol. Intoy then pushed Ronald towards the waiting motorcycle and told him to board it. They drove towards Rizal Avenue. After a few hours, Benito Tejano said he learned that a security guard was found dead and the body was brought to the Gomez Funeral Parlor. Benito immediately went to the parlor and discovered the dead was Ronald Quillope.[5]

SPO1 JAMES QUILLOPE, the brother of the victim, testified that they spent about P8,000, covering the expenses in Gomez Funeral Parlor and the amount spent in transporting the body of Ronald from Tacloban City to Tomas Opus, Southern Leyte. The family also spent P16,000 for the embalming and wake.[6]

The defense waived the presentation of any evidence.

On October 1, 1997, the trial court rendered a decision finding Intoy Gallo guilty of murder. The dispositive portion of said decision reads:

> WHEREFORE, and in view of the foregoing, the Court finds the accused, INTOY GALLO @ Palalam; a.k.a. Aniceto Gallo, GUILTY beyond reasonable doubt of the crime of Murder, as charged, and he is hereby sentenced to reclusion perpetua, with the accessory penalties provided by law; to indemnify the heirs of the victim the amounts of P31,000.00 as moral damages and P50,000.00 for the death of Ronald Quillope; and to pay the costs.
>
> SO ORDERED.[7]

Intoy Gallo interposed this appeal, alleging that the trial court erred:

I. IN GIVING WEIGHT TO THE TESTIMONY OF BENITO TEJANO ALTHOUGH THE VERACITY ON MATERIAL POINTS (AS TO THE PARTICIPATION AND PRESENCE OF ACCUSED ENTOY GALLO DURING THE MAULING INCIDENT IS CONCERNED) IS CONFLICTING AND SERIOUSLY DOUBTFUL;

II. THAT NOT MORE THAN ONE CIRCUMSTANTIAL EVIDENCE WAS PRESENT IN THE CASE;

III. IN FAILING TO APPRECIATE THE EXISTENCE OF SERIOUS DOUBTS ATTENDANT IN THE CASE IN FAVOR OF THE ACCUSED

The issues raised in this case are: (1) whether the trial court erred in giving credence to the testimony of Benito Tejano; and (2) whether the evidence for the prosecution established the guilt of the appellant beyond reasonable doubt.

Appellant contends that the testimony of Benito Tejano should not have been given credence by the trial court because it was inconsistent with his sworn statement before the provincial prosecutor. Appellant points out that Benito, in his testimony, declared that Ronald was sleeping in the Toyota. In contrast, Benito's sworn statement stated that it was Ronald who approached Intoy and Antonio. Appellant also claims that Benito's testimony was inconsistent with his sworn statement as to who was wearing the fatigue shirt, whether it was Intoy Gallo a.k.a. Palalam or someone else, namely Antonio Pesedas. Lastly, appellant argues that his guilt had not been established beyond reasonable doubt because no one actually saw him kill the victim and that the prosecution was able to prove only one circumstance[8] and not a chain of circumstances that could link appellant to the killing.

For the State, the Office of the Solicitor General (OSG) argues that the alleged inconsistencies in the testimony of Benito are more apparent than real. The witness was consistent in explaining that Ronald was the one sleeping in the Toyota, said the OSG, while appellant was the one in fatigue shirt. Further, OSG argues these are insignificant details which do not form part of the essential elements of the crime.

The OSG also avers that more than one circumstance were established by the prosecution. These are: (1) Appellant with Antonio Pesedas came to the area near the corner of Burgos and Rizal Avenues armed with an armalite rifle apparently in search for somebody;[9] (2) Finding Quillope inside the parked Toyota, appellant disarmed him of his service pistol and struck his right face with the butt of his armalite;[10] (3) Appellant forcibly took Quillope by pushing him into a waiting tricycle and sped away towards Rizal Avenue;[11] (4) Quillope died

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of gunshot wounds;[12] (5) Appellant was in hiding for six long years; (6) Appellant's companion Antonio Pesedas, already pleaded guilty;[13] (7) Appellant chose not to present any evidence to controvert that of the prosecution. These, according to the OSG, are more than enough circumstances to sustain the conviction of the appellant.[14]

On the issue of credibility of witnesses, settled is the rule that in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued to impeach the findings of the trial court, the appellate courts will not interfere with the trial court's findings on the credibility of the witnesses or set aside its judgment considering that the trial court is in a better position to decide the question for it had heard the witnesses themselves during the trial.[15] The evaluation of the credibility of witnesses is a matter that particularly falls within the authority of the trial court.[16]

The trial court appreciated favorably the testimony of Benito Tejano as witness for the prosecution. His testimony was straightforward and spontaneous. He had no reason to perjure himself. He placed his own life and his family in danger when he decided to testify in court. The trial court was not unaware of this, as it even ordered that said witness be placed under the government's witness protection program.[17]

On the alleged inconsistencies in the testimony and sworn statement of Benito, we agree with the OSG that these refer to immaterial and insignificant details. They do not change the fact that Benito was present at the time Ronald was accosted and taken away by Intoy and Antonio. Further, we have ruled in the past that discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are often incomplete. They do not purport to contain a complete compendium of the details of the event narrated by the affiant, and have been taken as inferior to court testimony.[18] In this case, Benito categorically stated on the witness stand that Ronald was sleeping in the Toyota vehicle, apparently making his sworn statement inaccurate. In fact, however, he testified that he did not say that Ronald approached Intoy and Antonio, to wit:

> Q: Now, you must understand now that what you told the investigator Luna and what you told the court this morning at least on the fact of from where you came from are diametrically opposed to each other, do you understand that?
>
> A: I recall he was asleep at that time.
>
> Q: So when you told the investigator Luna "Then came the security guard Ronald Quillope from nowhere", that fact is false?
>
> A: I did not state that, it was only that he was asleep that I told.[19]

There also was no inconsistency on who wore the fatigue shirt. Benito categorically stated:

> Upon the arrival of security guard Quillope he was also accosted by the companion of Intoy Palalam, the one who was wearing a fatigue shirt.[20]

It was not Benito but apparently appellant's counsel who misappreciated the statement to mean that it was Intoy's companion who was wearing the fatigue shirt.

Likewise, appellant failed to show any improper motive for Benito to testify falsely on a grave felony. Human experience tells us that a person, in the absence of a showing of any ill-motive, would not impute a grave crime upon another unless the same is true.[21] Absent such showing, we are constrained to uphold the trial court's favorable ruling on the credibility of Benito's testimony.

But was Benito Tejano's testimony sufficient to prove the guilt of appellant beyond reasonable doubt? The

testimony of a single witness, if found to be convincing and trustworthy is enough to sustain a conviction.[22] Testimonies of witnesses are to be weighed, not numbered.

Benito's testimony established a logical chain of circumstances which point to Intoy as one of Ronald's killers. First, Intoy was one of those who accosted Ronald and was the one who hit him with the butt of an M16 Rifle. Second, Intoy was among those who forced Ronald into the motorcycle and even rode with him towards Rizal Avenue. Third, Intoy had a gun and Ronald was found dead with gunshot wounds. Fourth, Intoy and his companions were the last persons seen with Ronald while the latter was still alive. Fifth, Intoy chose to flee and hide for six years, rather than voluntarily surrender. As repeatedly held, flight is a strong indication of guilt.[23] Appellant's act of not confronting his accuser right away goes against the principle that the first impulse of an innocent man when accused with wrongdoing is to express his innocence at the first opportune time.[24]

While it is true that no witness who saw the actual killing was presented, the above enumerated circumstances are enough to prove Intoy's guilt beyond reasonable doubt. Direct evidence of the commission of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Resort to circumstantial evidence is essential when to insist on direct testimony would result in setting felons free. As above discussed the following are present in the instant case such that conviction is justified on circumstantial evidence: (1) There is more than one circumstance; (2) The facts from which the inferences are derived are proven; and (3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[25]

However, we are not in agreement with the trial court that the killing should be considered as murder. The records reveal no proven circumstance to qualify the crime as murder. The trial court's decision is unclear on why it considered the killing as murder. While nighttime, superior strength, evident premeditation, and treachery were all alleged in the information, the prosecution did not prove each of them specifically and convincingly. This being so, the crime proved can only be homicide.[26]

On the civil aspect, no evidence was presented to support an award of moral damages. The amount of P31,000 might refer to the actual expenses incurred by the family of the victim,[27] but no receipts and other documentary evidence therefor were presented. However, in lieu of actual damages, temperate damages under Art. 2224 of the Civil Code[28] may be recovered since it has been shown by testimonial evidence that the victim's family suffered some pecuniary loss, the amount of which cannot be proved with certainty.[29] For this purpose an award of P24,000 is justified.

WHEREFORE, the assailed decision of the Regional Trial Court of Tacloban City, Branch 7, is MODIFIED. Appellant Intoy Gallo @ Palalam a.k.a. Aniceto Gallo is declared GUILTY of homicide for the death of Ronald Quillope. In the absence of any aggravating and/or mitigating circumstance, he is sentenced to suffer the indeterminate sentence of 6 years and 1 day of prision mayor as minimum to 14 years, 4 months and 1 day of reclusion temporal as maximum, and to pay the heirs of the victim P24,000 as temperate damages and P50,000 as death indemnity, and the costs. The award of moral damages is deleted.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and de Leon., Jr., JJ., concur.

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[1] Rollo, pp. 16-18.

[2] Id. at 9.

[3] Referred to as "Entoy" in appellant's brief.

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[4] Referred to as “Posedas” in appellant’s brief.

[5] TSN, Benito Tejano, August 20, 1996, pp. 3-13.

[6] TSN, SPO1 James Quillope, June 25, 1996, pp. 14-15.

[7] Rollo, p. 18.

[8] Id. at 33-36.

[9] TSN, Benito Tejano, August 20, 1996, pp. 4-6.

[10] Id. at 6-7 and 10.

[11] Id. at 7-8.

[12] Exhs. “A” and “B”, Records, pp. 25 and 27; TSN, Benito Tejano, August 20, 1996, pp. 10-11.

[13] Exh. “C”, Records, p. 40; TSN, May 27, 1996, p. 5.

[14] Rollo, pp. 58-66.

[15] People vs. Hernandez, G.R. No. 130809, 328 SCRA 201, 210 (2000).

[16] People vs. Baygar, G.R. No. 132238, 318 SCRA 358, 365 (1999); People vs. Venerable, G.R. No. 110110, 290 SCRA 15, 25 (1998).

[17] TSN, Benito Tejano, July 26, 1996, p. 3.

[18] People vs. Minangga, G.R. No. 130670, 332 SCRA 558, 565-566 (2000).

[19] TSN, Benito Tejano, August 20, 1996, p. 27.

[20] Id. at 27-28.

[21] People vs. Geguira, G.R. No. 130769, 328 SCRA 11, 31 (2000).

[22] People vs. Bundang, G.R. No. 101830, 272 SCRA 641, 651 (1997) citing People vs. Camat, G.R. No. 112262, 256 SCRA 52, 63 (1996); People vs. Galano, G.R. No. 111806, 327 SCRA 462, 472-473 (2000).

[23] People vs. Fabon, G.R. No. 133226, 328 SCRA 302, 317 (2000).

[24] People vs. Antonio, et.al., G.R. No. 128149, July 24, 2000, p. 9.

[25] People vs. Santos, G.R. No. 122935, 332 SCRA 394, 398-399 (2000).

[26] People vs. Araneta, G.R. No. 137604, 335 SCRA 1, 11 (2000).

[27] People vs. Cual, G.R. No. 131925, 327 SCRA 623, 648 (2000).

[28] Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

[29] People vs. Suplito, G.R. No. 104944, 314 SCRA 493, 504 (1999).

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