PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR PARBA, ACCUSED-APPELLANT.

G.R. No. 133886. September 05, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For the fatal shooting of Barangay Tanod Teodoro Coronado, Oscar Parba was charged with the crime of Murder in an Information[1] which alleges -

That on or about the 11[th] day of November 1996, at about 3:45 o'clock in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a gun, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and shoot one Teodoro Coronado with said deadly weapon, thereby inflicting upon him the following physical injuries to wit:

> a)
>
> Hemorrhagic shock secondary to penetrating GSW to the abdomen perforating
>
> b)
>
> The descending colon at 2 pts. With moderate fecal spilege 3.0 cm. cortical laceration of the L kidney
>
> c)
>
> With non expanding retro peritoneal hematoma 5% renal contusion left moderate hemoperitoneum
>
> And as a consequence of said injuries, said TEODORO CORONADO died a few hours later.
>
> CONTRARY TO LAW.

Upon arraignment, the accused, assisted by counsel, pleaded not guilty.[2] The case thereafter proceeded to trial.

After trial, the Regional Trial Court of Cebu City, Branch 18, found accused guilty as charged and accordingly rendered judgment[3] against him, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing facts and circumstances, accused OSCAR PARBA is found guilty beyond reasonable doubt of the crime of MURDER and is hereby imposed the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the heirs of the deceased Teodoro Coronado in the sum of P50,000.00 and to pay the costs. The accused is, however, credited in full during the whole period of his detention provided he will signify in writing that he will abide by all the rules and regulations of the penitentiary.
>
> SO ORDERED.

On review, accused-appellant asserts that -

I

THE LOWER COURT ERRED IN CONSIDERING THE EVIDENCE SUBMITTED AS SUFFICIENT TO WARRANT A FINDING OF ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.

II

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE ONLY ALLEGED EYEWITNESS PRESENTED BY THE PROSECUTION.

III

ASSUMING WITHOUT ADMITTING THAT ACCUSED3-APPELLANT COMMITTED THE CRIME, THE LOWER COURT ERRED IN FINDING TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME.

The Prosecution's version of the incident, as summed in the People's Brief, tends to show that -

On November 11, 1996, about 3:45 o'clock in the morning, Barangay Tanods Efren Belcher, Rosalio Navasquez, Blaise delos Reyes, Leonil Cuizon, Crisologo Bautista, Victor Reyes and Teodoro Coronado decided to have a roving patrol of Labangon, Cebu City.

When the roving patrol was at Shangrila Village II, Teodoro Coronado told Efren Belcher that he would go ahead to the interior of Shangrila Village II as he would check on the building which he was guarding. Teodoro Coronado's distance from the roving patrol was about 6 meters ahead.

The roving patrol suddenly heard 2 gunshots somewhere in the vicinity of Shangrila Village II and Salvador Extension. Running towards the gunshots, Efren Belcher and the rest of the roving patrol saw appellant with a gun and Teodoro Coronado on the ground. They also saw appellant shoot, for the third time, Teodoro Coronado.

Sensing the presence of the roving patrol, appellant turned his attention towards them and shot at them twice. Fortunately, nobody was hit as the members of the roving patrol were able to immediately scamper for safety.

Thereafter, a taxi passed by. Appellant again shot his gun towards the taxi. He then ran away from the scene of the incident.

Coming out from hiding fifteen minutes later, the roving patrol carried Teodoro Coronado and loaded him on a taxicab. The roving patrol was able to bring Teodoro Coronado to the Cebu City Medical Center for treatment.[4]

Despite the medical attention given to Teodoro Coronado, he died on November 12, 1996 as a result of the gunshots wounds he sustained on November 11, 1996. As explained by Dr. Policarpio Murillo IV in his testimony:

Q

Now kindly examine again you have copy of the death certificate tell us the cause of death?

A

The causes of death as written in the Certificate of Death for this patient is hemorrhagic shock secondary to penetrating gunshot wound to the abdomen, perforating the descending colon at 2 points with moderate fecal spilege 3.0 cm cortical laceration of the left kidney with non-expanding retro peritoneal hematoma 50% renal

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contusion on the left moderate hemoperitoneum and I include here other operative notes, other cause of death. Acute nocroses secondary to no. 1 zs I said earlier PTB other one is gunshot wound 0.5 x 0.5 cm antero medial aspect middle third (exit) left thigh.

Q

How many wounds in all did this Teodoro Coronado [sustain]?

A

Including the entrance and exit four open wounds.

Q

If you have to take it totally, he only sustained 2 two wounds.

A

But they are both wounds entrance and exit.

Q

We just considered it as four (4)?

A

It's actually how we reported it we still consider the exit wound as another wound.

Q

Now tell us which of the two wounds was fatal?

A

I believe that the wounds that [the] patient sustained hitting his abdomen is the most fatal.[5]

Accused-appellant denied that he had anything to do with the killing of Teodoro Coronado. As culled from the transcripts and summed in his brief, he narrates that -

9. On 11 November 1996, at 2:00 o'clock in the morning, Accused-Appellant was in house along with his wife Cristina Recana.[6] Not feeling well, he awakened his wife and informed her that he had a fever.[7] He told his wife that he was chilling, so his wife attended to him[8] his fever subsided at about 10:00 in the morning.[9]

10. In the meantime, at around 3:30 o'clock of the same morning, Accused-appellant heard a gunburst.[10] His wife likewise heard several gun shots at that moment.[11] Accused-Appellant learned that a person was shot at Shangrila, Labangon, two days after the incident.[12]

With regard to the first assigned error, accused-appellant insists that the lower court erred in considering the evidence submitted as sufficient to warrant a finding of guilt beyond reasonable doubt for the crime of murder because:

1.

The evidence presented by the prosecution is merely circumstantial in nature, which is likewise grossly insufficient to support a conviction beyond reasonable doubt.

1.1

When cross-examined, Efren Belcher, the only alleged eyewitness presented by the prosecution, admitted that he did not actually see the person who fired the gunshots. Neither did he see which particular portion of the victim's body was hit.

1.2

The place where the alleged crime was committed was dark. Hence, Belcher could not have clearly identified the perpetrator of the crime.

1.3

Other circumstances cast doubt upon the alleged positive identification of Accused-Appellant as the perpetrator of the crime.

2.

In the absence of clear and positive identification the defense of alibi should be upheld.

In the second assigned error, accused-appellant claims the lower court erred in giving credence to the testimony of the only alleged eyewitness presented by the prosecution since:

- Efren Belcher's testimony that he allegedly saw the Accused-Appellant fire two shots at the deceased Teodoro Coronado is inconsistent, thus casting doubt as to whether he actually witnessed the shooting.

- Efren Belcher's testimony that he was able to witness the shooting incident, and to identify the Accused-Appellant as the assailant despite the poor visibility at the scene of the crime is incredible, thus further discrediting him as an eyewitness.

- Belcher's testimony that Accused-Appellant allegedly fired a shot at a taxi and a panel passing by is likewise inconsistent as to whether the shot was fired upon the taxi or towards the air.

We disagree.

It must be pointed out that prosecution witness Efren Belcher, who was with the other members of the roving patrol, was only about six (6) meters away from the locus criminis when he heard two (2) gunshots and, thereupon, saw accused-appellant with a gun beside Teodoro Coronado who was prostrate on the ground. He also saw accused-appellant shoot the victim after which he fired at them. He testified as follows on how he witnessed the incident:

Q

Now, tell us the circumstances how and why this co-tanod of yours, Teodoro Coronado, was shot?

A

While we were standing at the corner of Shangrila Village II and Salvador Extension, moments later, Barangay Tanod Teodoro Coronado said that he would go first to Shangrila Village II.

Q

How about you, what then were you doing when he said that he will go ahead?

A

Doro went ahead and at the distance of six (6) meters, we followed him.

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Q

Then, what happened next, if there is any?

A

When we reached at Shangrila, an unusual incident was, Teodoro Coronado, we heard a shot and we saw the one who shot and we saw the fallen Teodoro. When we saw the person who shot Teodoro and the person who shot also saw us, he also directed a shot towards us, the group, and so, we ran away to the city and hid ourselves.

Q

Tell us that person whom you saw, who knew you and who shot Teodoro Coronado, if he is in court, will you be able to identify him?

A

Yes, I can.

Q

Kindly just stand and point out to the people inside the courtroom.

A

That person sitting last.

INTERPRETER:

Witness pointing to the person who stood up, identifying himself as Oscar Parba.

FISCAL PEDROSA:

Q

How many times did this Oscar Parba, whom you had identified, shot Teodoro Coronado?

A

Two (2) shots.

Q

How many times did this Oscar Parba, whom you had identified, shot Teodoro Coronado?

A

Two (2) shots.

Q

These two (2) shots, were they able to hit Teodoro Coronado?

A

Yes. He fell down.

He consistently maintained, on cross-examination, that it was accused-appellant who shot the victim, despite intense grilling and repeated attempts of the defense counsel to throw him off track.

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It may be that, as pointed out by counsel for accused-appellant, Belcher's testimonial declarations may have inconsistencies. However, for all the pains counsel took to impeach Belcher's credibility by leading him through an intricate maze of questions during cross-examination clearly calculated to trap him into making inconsistent statements, Belcher remained resolute in his declaration that when he and the roving patrol arrived at the place where they heard the gunshots, they saw accused-appellant brandishing a revolver with the victim already prostrate on the ground, and that upon seeing them, accused-appellant fired at them causing them to scamper for safety in different directions.[13]

So long as the witnesses' testimonies agree on substantial matters, the inconsequential inconsistencies and contradictions dilute neither the witnesses' credibility nor the verity of their testimonies.[14] When the inconsistency is not an essential element of the crime, such inconsistency is insignificant and can not have any bearing on the essential fact testified to, that is the killing of the victim.[15]

Accused-appellant next argues that Belcher did not actually see the accused-appellant fire the shots that hit the victim.[16] According to him, this negates his positive identification as the assailant of the victim.

The argument fails to persuade.

Even in the absence of direct evidence, accused may still be convicted on the basis of circumstantial evidence. Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if: 1.] there is more than one circumstance; 2.] the facts from which the inference are derived are proven; and 3.] the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. With regard to what yardsticks are to be used in assaying the probative value thereof -

Wharton suggests four basic guidelines in the appreciation of circumstantial evidence, (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every other theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond reasonable doubt that the accused is the one who committed the offense.[17] The peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. It is far more like puzzle which when put together reveals a convincing picture pointing towards the conclusion that the accused is the author of the crime.[18]

Even were we to go along with the claim of accused-appellant that eyewitness Belcher may not have seen the actual shooting of the victim, this will not extricate him from his predicament because the following circumstances lead to the inevitable conclusion that accused-appellant was the perpetrator of the crime.

First, it must be pointed out that immediately after hearing gunshots, Efren Belcher and the other members of the roving barangay tanod patrol rushed towards the area where they heard the shots and there they saw accused-appellant holding a revolver[19] one and a half meters away[20] from Teodoro Coronado who was already slumped on the ground[21] and mortally wounded. There were no other persons at the scene of the incident except accused-appellant and the victim when the roving patrol came upon them.[22]

Second, upon seeing the oncoming members of the roving patrol led by Belcher rushing toward him, accused-appellant fired at them causing the latter to scamper in different directions.[23] It appears that at the time accused-appellant fired upon the onrushing roving patrol, Belcher was a mere six (6) arm's length away from him.[24] Needless to state, such proximity of distance between accused-appellant and Belcher was more than sufficient for the latter to identify him positively as the author of the gunshots.

Third, when Belcher and the roving barangay tanod patrol came upon accused-appellant, they saw him fire a second shot on the already prostrate victim:

Q

Now, during the cross-examination you mentioned that these two shots, you did not see these two shots which is now correct?

A

I did not see but we only heard.

Q

So now it is clear that you have seen only the second shot?

A

Yes, sir.

ATTY. CARILLO:

Q

And you have only seen it at the time Teodoro Coronado was already lying on the ground?

A

Yes, sir.

Q

And you have seen it at the time when the alleged assailant was already one meter close to Teodoro Coronado and was pointing his gun to the victim who was already lying down?

A

Yes, sir.[25] (Emphasis ours)

The foregoing circumstances, when viewed in their entirety, are as convincing as direct evidence and, thus, negate the innocence of the accused-appellant.[26]

Accused-appellant also insists that the identification by Efren Belcher is doubtful because Teodoro Coronado himself failed to identify accused-appellant when he was still alive and in the hospital.[27]

The contention is tenuous.

Teodoro Coronado's family did not have a chance to talk with him when he was at the hospital because he was unconscious before and after his operation. Even when Coronado was still conscious, he was only able to communicate to his family by signals. His daughter Rosita Coronado-Balagtas testified as follows on direct examination:

FISCAL PEDROSA:

Did you see your father that day?

A

Yes, sir.

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Q

Where?

A

Cebu City Medical Center at the emergency room.

Q

What was his condition?

A

He was serious.

Q

He was still alive?

A

Yes, sir.

Q

Why did you say he was serious?

A

Because on my personal observation he was already unconscious.

Q

Were you able to talk to him?

A

No, sir.[28]

Accused-appellant interposes alibi as his defense claiming that at the time of the incident, he was at home in Salvador Extension, Labangon, Cebu City with a fever.[29] His statement was corroborated by his wife, Cristine Ricana, who alleged that since her husband had a fever she massaged his body.[30]

We are not convinced.

For alibi to prosper, the accused must: 1.] prove his presence at another place at the time of the perpetration of the crime; 2.] demonstrate that it would be physically impossible for him to be at the scene of the crime at the time it was committed.[31] Accused-appellant failed to establish the second requisite. Since the distance between the house and the place of the incident was only about eighty (80) meters, it was not impossible for accused-appellant to be at the scene of the crime at the time of its commission.[32] In other words, accused-appellant's defense that he was at some other place at the time of the killing does not satisfactorily show that it was physically impossible for him to have perpetrated the felony.[33]

All told, the core issue raised by accused-appellant centers on the credibility of the witnesses. The doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to an appellate court.[34] The

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evaluation of the credibility of witnesses and their testimonies is a matter that is best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct and attitude, especially under cross-examination.[35] A meticulous review of the records of this case, convinced us that the trial court did not err in finding the accused-appellant guilty of killing the victim.

Anent the third assigned error, accused-appellant contends that the lower court erred in finding that treachery and evident premeditation attended the commission of the felony, inasmuch as:

> - The lower court hastily concluded in its decision that treachery ands evident premeditation attended the commission of the crime without setting forth therein the facts and circumstances which may sustain such finding, in violation of the Constitution.
>
> - The testimonies of the witnesses for the prosecution failed to establish the manner as to how the Accused-Appellant allegedly shot the deceased Coronado. Thus, there can be no basis for the trial court's finding that the crime was committed with treachery and evident premeditation.

We agree.

Article 14, paragraph (16), of the Revised Penal Code provides that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make. The testimony of prosecution witness Efren Belcher, although sufficient to prove that accused-appellant did indeed kill Teodoro Coronado, is nevertheless wanting as far as proof of treachery is concerned. As we recently pointed out in People v. Antonio Samudio y Loresto, et al.[36] -

Treachery cannot be presumed but must be proved by clear and convincing evidence as conclusively as the killing itself. To appreciate treachery, two (2) conditions must be present, namely, (a) the employment of the means of execution that give the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately or consciously adopted.[37] This court has already held that where treachery is alleged, the manner of attack must be proven. Where no particulars are shown as to the manner in which the aggression was made or how the act which resulted in death of the deceased began and developed, treachery cannot be appreciated as a qualifying circumstance.[38] (Emphasis ours)

Suffice it to state that treachery cannot be appreciated in this case considering that prosecution witness Efren Belcher did not see the initial stage and particulars of the attack on Teodoro Coronado. In other words, there is absolutely no showing how the attack commenced; no indicia whether the attack was so sudden and unexpected that it afforded the victim no chance to defend himself. In the absence of this information, alevosia can not be established from the circumstances. Treachery can not be presumed; it must be proved by clear and convincing evidence as clearly as the killing itself.[39]

We agree with the Solicitor General that the attendance of evident premeditation in the killing was not established because there was no proof or showing of: 1.] the time when the offender determined to commit the crime; 2.] an act manifestly indicating that the offender had clung to his determination; and 3.] a sufficient lapse of time between the determination and the execution thereof to allow the offender to reflect on the consequences of his act.[40] As in treachery, none of these elements of evident premeditation can be fairly inferred from the evidence adduced by the prosecution in this case.

The Rules of Court provide that when there is a variance between the offense charged in the Information and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged.[41] Since the prosecution was

not able to prove any qualifying circumstance, accused-appellant should only be sentenced to the lesser crime of homicide, which is necessarily included in murder.[42]

The penalty for homicide under the Revised Penal Code, as amended by R.A. No. 7659, is reclusion temporal. Applying the Indeterminate Sentence Law and there being no modifying circumstance, the maximum to be imposed upon the accused-appellant should be taken from the medium period of reclusion temporal, the range of which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is prision mayor, the range of which is six (6) years and one (1) day to twelve (12) years in any of its periods.

With regard to the civil indemnity ex delicto awarded by the trial court in the amount of P50,000.00, the same is proper considering that the civil indemnity is automatically granted to the heirs of the victim without need of proof other than the commission of the crime.[43]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 18, Cebu City in Criminal Case No. CBU-43727 finding accused Oscar Parba guilty beyond reasonable doubt of the crime of murder is hereby MODIFIED as follows:

1.] the accused-appellant is found guilty beyond reasonable doubt of the crime of Homicide and sentenced to suffer an indeterminate penalty of Twelve (12) Years of Prision Mayor, as minimum, to Seventeen (17) Years and four (4) Months of Reclusion Temporal as maximum; and

2.] the accused-appellant is ordered to pay the heirs of the deceased Teodoro Coronado P50,000.00 as civil indemnity.

SO ORDERED.

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

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[1] Record, p. 1; docketed as Criminal Case No. CBU-43727.

[2] Ibid., p. 17.

[3] Id., pp. 116-125; penned by Judge Galicano C. Arriesgado.

[4] TSN, 7 May 1997, pp. 5-7.

[5] TSN, 30 April 1997, p. 10.

[6] TSN, 12 September 1997, p. 3.

[7] Ibid., p. 4.

[8] Id.

[9] Id..

[10] Id.

[11] TSN, 11 September 1997, p. 4.

[12] TSN, 12 September 1997, p. 4.

[13] TSN, 14 July 1997, pp. 9-14.

[14] People v. Agomo-o, G.R. No. 131829, 23 June 2000, 334 SCRA 279.

[15] People v. Levy Monieva, G.R. No. 123912, 8 June 2000, 333 SCRA 244, citing People v. Pandiano, 232 SCRA 619 [1994]; See also People v. Arteche Antonio y Payagan, G.R. No. 122473, 8 June 2000, 333 SCRA 201.

[16] Appellant's Brief, p. 8.

[17] Wharton's Criminal Evidence, Vol. II, p. 1643.

[18] People v. Orcula, Sr., G.R. No. 132350, 5 July 2000, 335 SCRA 129, citing People v. Locsin Fabon @ "Loklok", 328 SCRA 302 [2000].

[19] TSN, 14 July 1997, p. 11.

[20] Ibid., p. 13.

[21] Id., pp. 10-11.

[22] Id., p. 11.

[23] Id., p. 13.

[24] Id., p. 14.

[25] TSN, 22 July 1997, pp. 5-6; emphasis supplied.

[26] People v. Guarin, 317 SCRA 234 [1999]; People v. Sanchez, 308 SCRA 264 [1999].

[27] Appellant's Brief, pp. 14-15.

[28] TSN, 6 May 1997, p. 5.

[29] Appellant's Brief, p. 18.

[30] TSN, 11 September 1997, p. 4.

[31] People v. Elmer Bolivar y Moyco, et al., G.R. No. 130597, 21 February 2001, p. 11, citing People v. Magpantay, 284 SCRA 96 [1998] and People v. Tanco, 284 SCRA 251 [1998].

[32] People v. Castillo, 273 SCRA 22 [1997].

[33] See People v. Teodoro Laut y Rebellon, et al., G.R. No. 137751, 1 February 2001, p. 7.

[34] People v. Raymundo Visaya @ "Junjun", et al., G.R. No. 136967, 26 February 2001, p. 15, citing People v. Andales, 322 SCRA 56 [2000], citing People v. Escandor, 265 SCRA 444 [1996].

[35] People v. Ruel Baway y Aligan, G.R. No. 130406, 22 January 2001, p. 18.

[36] G.R. No. 126168, 7 March 2001, p. 9.

[37] People v. Albacin, G.R. No. 133918, 13 September 2000, p. 16.

[38] People v. Torre, G.R. No. 130655, 9 August 2000, p. 13; People v. Orcula, G.R. No. 132350, 5 July 2000, p. 14; People v. Flores, G.R. No. 116794, 23 June 2000, p. 7; emphasis supplied.

[39] People v. Julio Herida y Bernabe @ "Jun Tagay", G.R. No. 127158, 5 March 2001, p. 6, citing People v. Flores, G.R. No. 116794, 20 June 2000, p. 7, citing People v. Albao, 287 SCRA 129 [1998].

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[40] People v. Jariolne, G.R. No. 127571, 11 May 2000, p. 11; People v. Pascual, G.R. No. 127761, 28 April 2000.

[41] Section 4, Rule 120, Rules of Court.

[42] Section 5, Rule 120 of the Rules of Court further provides that "An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in complaint or information, constitute the latter. xxx"

[43] People v. Dimailig, G.R. No. 120170, 31 May 2000; People v. Tolibas, G.R. No. 103506, 15 February 2000.

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