

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE BALLERAS, ACCUSED-APPELLANT.

G.R. No. 134564. June 26, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before this Court for automatic review is the Decision[1] dated June 8, 1998 of the Regional Trial Court (RTC), Branch 46, Urdaneta, Pangasinan, in Criminal Case No. U-9381, convicting Jose Balleras of murder and sentencing him to suffer the supreme penalty of death, and to indemnify the heirs of the victim, Rufino Tambo, the sums of P20,000.00 for actual expenses and P50,000.00 as damages.

On October 21, 1997, an information was filed with the said RTC charging Jose Balleras with murder committed as follows:

“That on or about May 18, 1997, in the evening at barangay San Bonifacio, San Manuel, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long and unlicensed firearm, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot Rufino Tambo, inflicting upon him mortal gunshot wounds which caused his instantaneous death, to the damage and prejudice of his heirs.

“CONTRARY to Article 248 of the Revised Penal Code, as amended by R.A. 7659.”[2]

Upon his arraignment, the accused pleaded not guilty to the charge.[3] Trial ensued thereafter.

Evidence for the prosecution shows that on May 18, 1997, at around 8:30 in the evening, Rufino Tambo, Ruben Collado and Ruben Cabreros were engaged in a drinking spree in front of Rufino’s house situated in an irrigation site in Barangay San Bonifacio, San Manuel, Pangasinan. Rosie Tambo, 12 years old, was seated beside her father Rufino Tambo. Anita Tambo, Rufino’s common-law wife, was inside the house watching the group through the kitchen window. The place was illuminated by moonlight and an improvised oil burner. Suddenly, a man with a long firearm, whose face was covered with a white bonnet, emerged from the irrigation canal. He approached Rufino and shot him thrice. Rufino died instantly, while his daughter Rosie sustained a gunshot wound on her left spinal column. Ruben Collado and Ruben Cabreros scampered away. The assailant removed his bonnet and declared, “If you will not get out of here, I will kill you all.”[4] Then, he fled.

With the help of one Domingo Abalos, Roger Tambo, Rufino’s son, brought Rosie to the hospital and thereafter, proceeded to the barangay captain to report the incident.[5]

The Autopsy Report dated May 19, 1997 prepared by Dr. Asuncion C. Tuvera, who confirmed the same on the witness stand, shows that Rufino Tambo died due to massive hemorrhage as a result of multiple gunshot wounds on the left side of his chest, on his right scapular area, and on his right upper forearm.[6]

Anita and Rosie Tambo testified that they recognized the assailant as accused Jose Balleras who had a grudge against Rufino. They claimed that a carabao belonging to the accused’s sister was seen in the premises of the

deceased.[7]

From the kitchen window, Anita saw the accused approaching the group who were then drinking. After her husband was shot, she immediately approached him and embraced him. When she looked up, she recognized the accused as the assailant.[8]

According to the 12-year-old Rosie Tambo, then seated beside her father, she saw the accused coming from the irrigation canal. He approached the group and suddenly shot her father. The accused told them to leave the place or else he would kill them. As he spoke, he removed the bonnet covering his face. Then, he ran to the direction of his house. The accused is her uncle, his wife being her father's sister.[9]

In his defense, the accused denied having shot and killed Rufino Tambo, his brother-in-law. He narrated that on May 18, 1997, from 7:30 p.m. up to 10:00 p.m., he was in his house at San Bonifacio, San Manuel, Pangasinan, conversing with his wife, Adelina Balleras, and spouses Elpidio and Marcela Pote. They were together until around 10:00 in the evening. The next day he came to know that Rufino died. He was investigated by the police and subjected to a paraffin test which yielded negative results. He stated that he never had any quarrel or misunderstanding with the victim, particularly involving a carabao.[10]

Elpidio and Marcela Pote corroborated the testimony of the accused.[11]

On June 8, 1998, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, JUDGMENT OF CONVICTION BEYOND REASONABLE DOUBT is hereby rendered and the Court sentences JOSE BALLERAS to suffer the penalty of DEATH to be implemented in the manner provided for by law. To indemnify the heirs of Rufino Tambo the sum of P20,000.00 for actual expenses plus P50,000.00 damages.

"The Clerk of Court is hereby ordered to elevate the entire records of this case to the Honorable Supreme Court of the Philippines for automatic review.

"The Jail Warden of the Bureau of Jail Management and Penology (BJMP) is hereby ordered to deliver the person of Jose Balleras to the Bureau of Prisons, Muntinlupa, Manila, within fifteen (15) days from date, with proper security.

"SO ORDERED." [12]

Hence, this automatic review of the lower court's Decision. Appellant Jose Balleras ascribes to the trial court the following assignments of error:

"I. THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

"II. THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY THE HEIRS OF THE VICTIM IN THE AMOUNT OF P20,000.00 AS ACTUAL DAMAGES AND P50,000.00 AS DAMAGES." [13]

Appellant assails the credibility of prosecution eyewitnesses Anita and Rosie Tambo who positively identified him as the person who killed Rufino Tambo.

The established rule in our criminal jurisprudence is that when the issue is one of credibility of witnesses, the appellate courts will not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[14] Unless it can be shown that the trial court plainly overlooked certain facts of

substance and value which, if considered, may affect the result of the case, or in instances where the evidence fails to support or substantiate the trial court's findings of fact and conclusions, or where the disputed decision is based on a misapprehension of facts, the trial court's assessment of the credibility of witnesses will be upheld.[15]

We find no cogent reason to reverse the trial court in giving credence to the testimonies of the prosecution witnesses.

Rosie Tambo categorically declared that she saw the appellant shoot her father with a long firearm. She recognized him to be her uncle when he removed the white bonnet covering his face. At that time, she was in pain but she managed to determine the identity of the assailant. Pertinent, therefore, is the ruling of this Court that the most natural reaction of victims of violence is to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed.[16]

Rosie identified appellant well. It was a moonlit night and the drinking session was adequately lighted by an oil burner. She even described appellant's weapon as a long firearm.

Anita corroborated Rosie's testimony in material points. Anita saw the appellant before he shot her husband. When she embraced him, she had the opportunity to identify the appellant as the perpetrator of the crime.

In *People vs. Quijon*, this Court ruled that where the prosecution eyewitnesses (as in this case) were familiar with both the victim and the accused, and where the locus criminis afforded good visibility, and where no improper motive can be attributed to them for testifying against the accused, then their version of the story deserves much weight.[17]

Appellant contends that the results of the paraffin test, being negative,[18] do not sustain the version of the prosecution. However, negative results of the paraffin test do not conclusively show that a person did not discharge a firearm at the time the crime was committed for the absence of nitrates is possible if a person discharged a firearm with gloves on, or if he thoroughly washed his hands thereafter.[19] The absence of powder burns in a suspect's hand is not conclusive proof that he has not fired a gun.[20]

Appellant also maintains that the trial court erred in discarding his defense of alibi. For alibi to prevail, clear and satisfactory proof must show that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else.[21] In this case, the element of physical impossibility is absent because appellant's house is only two kilometers away from the victim's residence, negotiable in fifteen minutes.[22] Moreover, the defense of alibi, generally considered a weak defense, collapses in the light of the positive identification of the appellant by the witnesses for the prosecution.

Thus, we affirm the trial court's decision finding appellant liable for the death of Rufino Tambo.

The trial court appreciated treachery to qualify the crime to murder. And rightly so. Treachery exists when: (1) the means of execution employed gave the person no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted, clearly attended the killing of the victim.[23] Here, the appellant, surreptitiously, without warning and without risk to himself approached Rufino Tambo and shot him thrice. The unprovoked, sudden and surprised assault made by the appellant was undoubtedly a treacherous mode of killing the victim. Thus, the circumstance that the attack was sudden and unexpected and the victim was caught totally unprepared to defend himself qualifies the crime committed to murder.[24]

However, the trial court's appreciation of evident premeditation as an aggravating circumstance is unfounded. The requisites of evident premeditation, which must be duly proven, are: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and

(c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[25] These elements are not present in the case at bar.

Furthermore, there is no basis for considering the use of an unlicensed firearm as an aggravating circumstance. First, the subject firearm was not recovered. Second, Republic Act No. 8294,[26] cited by the trial court, which provides that “if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance,” has no application to this case. The said law took effect on July 6, 1997 after the instant crime was committed.[27]

In sum, appellant is guilty of the crime of murder, qualified by treachery, without any aggravating or mitigating circumstance attending its commission. Under Article 248 of the Revised Penal Code, as amended, murder is punishable by reclusion perpetua to death. The two penalties being indivisible, and there being neither mitigating nor aggravating circumstance, the lesser penalty of reclusion perpetua shall be applied.[28]

The trial court awarded the amount of P50,000.00 as damages without specifying the nature of such damages. When death occurs as a result of a crime, the heirs of the deceased are entitled to P50,000.00 as civil indemnity without need of any evidence or proof of damages.[29] Hence, the amount indicated as “damages” by the trial court is to be designated as civil indemnity.

The grant of P20,000.00 for actual expenses is adequately supported by receipts on record.

WHEREFORE, the assailed decision of the RTC, Branch 46, Urdaneta, Pangasinan, in Criminal Case No. U-9381, convicting accused Jose Balleras of murder, is **AFFIRMED** with **MODIFICATION** in the sense that he is sentenced to suffer the penalty of reclusion perpetua and is ordered to indemnify the heirs of the victim, Rufino Tambo, the sums of P50,000.00 as civil indemnity and P20,000.00 as actual damages. With costs de oficio.

SO ORDERED.

Bellosillo, Puno, Vitug, Kapunan, Mendoza, Ynares-Santiago, Carpio, Austria-Martinez, and Corona, JJ., concur. Davide, Jr., C.J., Panganiban, and Quisumbing, JJ., on official leave.

[1] Penned by Judge Modesto C. Juanson.

[2] Rollo, p. 11.

[3] Records of the RTC, p. 69.

[4] Transcript of Stenographic Notes (TSN), January 5, 1998, p. 8.

[5] Ibid., March 4, 1998, pp. 2- 12.

[6] Records of the RTC, p. 9.

[7] TSN, January 5, 1998, p. 5.

[8] Ibid., February 3, 1998, pp. 9-13.

[9] Ibid., January 5, 1998, pp. 7-11.

[10] TSN, April 13, 1998, p. 207; TSN, April 15, 1998, pp. 2-7.

[11] Ibid., February 26, 1998, pp. 2-8; TSN, March 2, 1998, pp. 2-8.

[12] Rollo, p. 46.

[13] Appellant's Brief, Rollo, p. 83.

[14] People vs. Mendoza, 332 SCRA 485, 494 (2000).

[15] People vs. Celis, 317 SCRA 79, 91-92 (1999).

[16] People vs. Alipayo, 324 SCRA 447, 459 (2000).

[17] 325 SCRA 453, 462 (2000).

[18] Records of the RTC, p. 156.

[19] People vs. Flores, 328 SCRA 461, 472 (2000).

[20] Abalos vs. Court of Appeals, 321 SCRA 446, 455 (1999).

[21] People vs. Gonzales, 311 SCRA 547, 562 (1999).

[22] TSN, April 15, 1998, p. 5.

[23] People vs. Nullan, 305 SCRA 679, 703 (1999).

[24] People vs. Chua, 339 SCRA 405, 426 (2000).

[25] People vs. Sison, 312 SCRA 792, 804 (1999).

[26] "An Act Amending the Provisions of Presidential Decree No. 1866, as amended, entitled 'Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.'"

[27] People vs. Valdez, 347 SCRA 594, 608-609 (2000).

[28] Article 63(2), Revised Penal Code; People vs. Macoy, 338 SCRA 217, 230 (2000); People vs. Bautista, 312 SCRA 475, 485 (2000).

[29] People vs. Bonito, 342 SCRA 405, 428 (2000); People vs. Narca, 339 SCRA 76, 85 (2000).

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