

**BENEDICT URETA, BERNARDO TARAN AND VICTOR DE JUAN,
PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, SOCRATES
FULGENCIO AND THE HEIRS OF ROCEL**

G.R. No. 135308. August 15, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioners assail the decision[2] of the Court of Appeals in CA-G.R. CR. No. 14627, dated March 26, 1997, which affirmed with modification the consolidated judgment dated January 29, 1994 of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 4, in Criminal Cases Nos. 3322-23. The appellate court upgraded the conviction of petitioners Bernardo Taran, Victor de Juan, and Benedict Ureta in Criminal Case No. 3322 from homicide to murder and sustained the conviction of petitioner Benedict Ureta in Criminal Case No. 3323 for frustrated homicide. Before us, petitioners pray for acquittal.

The antecedents of this petition are as follows:

On March 25, 1991, two separate informations for murder and frustrated homicide were filed with the RTC of Kalibo, Aklan against herein petitioners. In Criminal Case No. 3322, Ureta, de Juan, and Taran were charged with murder allegedly committed as follows:

That on or about the 30th day of November, 1990, in the evening, in Barangay Bugasongan, Municipality of Lezo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with deadly weapons consisting of a rifle and knives, conspiring, confederating and mutually helping one another, with evident premeditation, treachery, abuse of superior strength (sic) and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and shoot one JOSE ROCEL FULGENCIO, thereby inflicting upon the latter physical injuries,...

x x x

as per Post Mortem Examination Report signed by Dr. Reynaldo P. Sucgang, Jr., Medical Specialist 1 of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and made an integral part hereof, which physical injuries caused the death of said JOSE ROCEL FULGENCIO.

CONTRARY TO LAW.[3]

In Criminal Case No. 3323, the charge sheet for frustrated homicide filed against Ureta reads:

That on or about the 30th day of November, 1990 in the evening, in Barangay Bugasongan, Municipality of Lezo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a rifle, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one SOCRATES FULGENCIO, thereby inflicting upon the latter physical injury, to wit:

“Gunshot wound, lateral aspect, proximal 3rd left thigh.”

as per Medico Legal Report on Physical Injuries issued by Dr. Stevens N. Fuentes, M.D., Medical Officer III of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and made an integral part hereof, the accused having thus performed all the acts of execution which would have produced the crime of Homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said SOCRATES FULGENCIO, which prevented his death.

CONTRARY TO LAW.[4]

When arraigned, petitioners pleaded not guilty. Since the two cases arose out of the same incident, they were tried jointly.

The prosecution presented Socrates Fulgencio, Dr. Reynaldo Sucgang, and Dr. Stevens Fuentes as its witnesses. Socrates Fulgencio, who survived the homicidal attack, was the sole eyewitness to the crimes. The two doctors, employed at the Dr. Rafael Tumbokon Memorial Hospital in Kalibo, Aklan, had conducted the autopsy on the deceased, Jose Rodel Fulgencio, and had medically examined the surviving brother, Socrates Fulgencio.

SOCRATES FULGENCIO declared that at about 7:00 P.M. of November 30, 1990, he and his brother Jose Rodel Fulgencio, hereafter simply Rodel, were on their way home from the house of their aunt, Erna dela Cruz, in Bugasongan, Lezo, Aklan. When they passed the residence of Councilman Renato Leonardo, six men came out of said house. Of this group, Socrates recognized Isidro de Juan, Ely Leonardo, Nilo Cezar, and Armando Cezar. They surrounded Rodel, while Socrates merely stood aside. Moments later, petitioners Bernardo Taran and Victor de Juan arrived on board a motorcycle and joined the six men. Taran had a gun in his right hand, while de Juan had a knife tucked in his waistband. Moments later, Benedict Ureta and Rudolfo Taran also arrived. Ureta and Rodel had a brief altercation. Bernardo Taran then struck Rodel's face with a gun, while de Juan stabbed Rodel's stomach, and Ureta shot Rodel with a long firearm. A certain Rodel Sorio also struck Rodel with a bolo but Socrates did not see where Rodel was hit. Despite his wounds, Rodel was able to run for about five meters from his assailants before collapsing. Socrates helped Rodel to stand up but Ureta allegedly shot him (Socrates) in the thigh. Socrates fell and rolled away. When he looked back to where his brother was, Socrates saw three unidentified persons striking Rodel with their bolos. Socrates fled home. He asked for help from his sister Judy Grace and brother Cyril to bring Rodel to a hospital. Rodel died from the injuries he sustained.

DR. REYNALDO SUCGANG testified that he conducted the post-mortem examination on Rodel Fulgencio's cadaver. He found multiple stab wounds in the victim's right chest and a gunshot injury. His findings were as follows:

EXTERNAL FINDINGS: = Multiple stabbed (sic) wounds, right chest, Right upper Quadrant, left axillary area

Hacking wound back & left Thigh

GSW right thigh, thru & thru

INTERNAL FINDINGS: = Penetrating wound at mid-liver (depth-4 inch) with cut/severed arteries penetrating the right diaphragm with massive blood loss & blood clots.

CAUSE OF DEATH: = Massive Blood Loss

Stabbed wounds (02 points)[5]

Dr. Sugang further testified that the victim in Criminal Case No. 3322, Rocel Fulgencio, also sustained a “contusion hematoma right forearm” and “contusion hematoma right hand” among his injuries.[6]

DR. STEVENS FUENTES testified in Criminal Case No. 3323 that he examined the injuries of Socrates Fulgencio. He found that Socrates sustained a gunshot wound on the “proximal third lateral aspect of the left thigh.”[7]

The defense version of the incident was summed up by the Court of Appeals as follows:

At around 8:00 o'clock, accused-appellant Benedict Ureta was at the house of Nelson Castaño in Bugasongan, Lezo, Aklan, when he heard a shot. He went outside and saw Rocel Fulgencio holding a gun. He accosted Rocel but the latter pointed the gun at him so he grabbed the gun and they grappled for possession. Accused-appellant Bernardo Taran arrived and held Rocel by the shoulders, pulled him backward and then jumped to the canal alongside the road. Benedict Ureta was able to get the gun from Rocel but the latter pulled out another gun and pointed it to the former. Benedict Ureta fired and retreated about 25 to 30 meters away. Rocel fell down but fired his gun at random five (5) times. At this juncture, Socrates Fulgencio was seen crawling towards Rocel. Socrates got the gun from Rocel, fired it once then ran away. Three unidentified persons then came and bolloed (sic) Rocel who was lying on the road and then ran away towards Numancia.

Shortly thereafter, accused-appellant Victor de Juan and Dioclesio Sabino arrived on a motorcycle coming from Numancia. They stopped when they saw a man lying on the road. They went near and recognized the man to be Rocel Fulgencio. There were several people there, among them were Leoncito Legaspi and Ely Leonardo. A tricycle arrived and Rocel was loaded on it. After the tricycle had left, Victor de Juan and Dioclesio Sabino went home.[8]

The trial court convicted petitioners of homicide in Criminal Case No. 3322 and petitioner Ureta of frustrated homicide in Criminal Case No. 3323 but ruled out conspiracy among the petitioners. The decretal portion of its consolidated judgment reads:

WHEREFORE, finding the accused BERNARDO TARAN in CRIMINAL CASE NO. 3322 GUILTY beyond reasonable doubt as an accomplice to the crime of Homicide without aggravating or mitigating circumstances, he is hereby sentenced to suffer an indeterminate penalty of imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) years and ONE (1) DAY of prision mayor as maximum and to indemnify the heirs of the victim Rocel Fulgencio the sum of FIFTY THOUSAND PESOS (P50,000.00) jointly with his other co-accused.

Accused VICTOR DE JUAN is found GUILTY in the same case beyond reasonable doubt of the crime of Homicide without mitigating circumstance and he is hereby sentenced to suffer an indeterminate penalty of imprisonment of EIGHT (8) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal and to indemnify the heirs of the victim Rocel Fulgencio the sum of FIFTY THOUSAND PESOS (P50,000.00) jointly with his other co-accused.

Accused BENEDICT URETA is found GUILTY beyond reasonable doubt as an accomplice to the crime of Homicide in CRIMINAL CASE No. 3322 and is hereby sentenced to suffer an indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum and to indemnify the heirs of the victim Rocel Fulgencio the sum of FIFTY THOUSAND PESOS (P50,000.00) jointly with his co-accused.

In CRIMINAL CASE NO. 3323, the accused BENEDICT URETA is found GUILTY beyond reasonable doubt of the crime of Frustrated Homicide and is hereby sentenced to suffer an indeterminate penalty of imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum and to indemnity (sic) the

victim Socrates Fulgencio the sum of TWENTY THOUSAND PESOS (P20,000.00) as moral and compensatory damages.

SO ORDERED.[9]

Petitioners appealed their conviction to the Court of Appeals contending that the trial court erred in condemning them solely on the basis of the uncorroborated testimony of the prosecution's eyewitness.

On March 26, 1997, the Court of Appeals promulgated its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed decision with respect to Criminal case No. 3322 is hereby MODIFIED as to the nature of the offense committed and the degree of participation of each of the malefactors. As MODIFIED, We find accused-appellants Benedict Ureta, Victor de Juan and Bernardo Taran guilty beyond reasonable doubt of the crime of murder and are each sentenced to suffer an indeterminate penalty ranging from seventeen (17) years and four (4) months of Reclusion Temporal as minimum to Reclusion Perpetua as maximum. With respect to Criminal Case No. 3323, We affirm the findings of the court a quo.

SO ORDERED.[10]

In ruling that the killing of Rocel is murder, rather than homicide, the appellate court found that Rocel's killing was attended by abuse of superior strength. Rocel was unarmed when attacked by petitioners, who not only acted in concert but were armed with dangerous weapons as well. The appellate court also found petitioners equally guilty as conspirators.

Petitioners moved for reconsideration, but the appellate court denied their motion in its resolution of August 25, 1998.[11]

Hence this petition, anchored on the following grounds:

I

THE JUDGMENT OF CONVICTION AGAINST THE PETITIONERS WERE (sic) RENDERED WITH GRAVE ABUSE OF DISCRETION AS PROSECUTION FAILED TO PRESENT SUFFICIENT EVIDENCE TO REBUT THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED-PETITIONERS, BASED AS IT IS ON THE INCREDIBLE TESTIMONY OF A POLLUTED LONE EYEWITNESS. ON THE OTHER HAND, THE ACCUSED PRESENTED A PREPONDERANCE OF EVIDENCE PROVING THEIR LAWFUL DEFENSES, CONSISTING OF UNREBUTED (sic) CONTRARY TESTIMONIES NOT ONLY OF THE PETITIONERS THEMSELVES BUT ALSO SEVERAL INDEPENDENT AND DISINTERESTED (sic) EYE-WITNESSES.

II

THE COURT OF APPEALS AND THE LOWER COURT COMMITTED ERROR AS WELL AS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT ACQUITTING (sic) PETITIONERS WITH RESPECT TO THE CONSOLIDATED CRIMINAL CASES.[12]

As hereafter discussed, we find the instant petition without merit.

Pertinent for our resolution of this petition is the issue of the sufficiency of the prosecution evidence, consisting mainly of the uncorroborated testimony of a single eyewitness, to convict petitioners beyond reasonable doubt. This matter hinges, in turn, on the question of the credibility of the eyewitness, Socrates Fulgencio.

Petitioners contend that the Court of Appeals erred in affirming their conviction based on the suspect testimony of the sole prosecution eyewitness. Petitioners point out that no less than nine disinterested eyewitnesses of unquestioned candor, fairness, intelligence and truthfulness, had contradicted Socrates' testimony.

The Office of the Solicitor General, as counsel for the State, counters that there is no reason whatsoever to doubt the testimony of Socrates Fulgencio. Socrates steadfastly testified on the actual commission of the crime and positively identified its perpetrators. No ill motive could be imputed to him to falsely testify against petitioners. Nor would the fact that Rocel was his brother impel him to perjure and falsely implicate petitioners, for it is unnatural for a relative who is interested in seeking justice to accuse persons other than the real culprits. Further, Socrates could not possibly be mistaken as to petitioners' identities for he knew them since childhood. Lastly, the denials by petitioners cannot prevail over the positive identification by the prosecution eyewitness.

Petitioners' contentions for their acquittal are far from persuasive. Note that the trial court found Socrates to be a credible witness, deserving of full faith and credence. Note likewise that the appellate court did not disturb the trial court's appreciation of Socrates' credibility. It is doctrinal that the trial court's assessment of the credibility of a witness when affirmed by the Court of Appeals is entitled to great weight and respect.[13] Petitioners fail to show any persuasive reason for us to depart from this doctrine, other than insisting that several witnesses for the defense contradicted Socrates' version of the incident. However, credibility must be weighed not by the number of witnesses but by the quality of their testimonies.

The inconsistencies referred to by petitioners in a last-ditch effort to demolish Socrates' credibility concern only minor and collateral matters. They do not relate to the essential elements of the crime. For instance, it hardly matters where or from whom petitioner Ureta got hold of a gun. It is likewise immaterial whether petitioner de Juan's shirt was tucked in or not. Petitioners harp on matters irrelevant to the elements of the crime. The alleged minor inconsistencies pointed out by petitioners are not grounds for acquittal.[14] Moreover, inconsistencies in the testimony of a prosecution witness with respect to minor details and collateral matters do not affect the substance of his declarations or the veracity of his testimony, but rather, they enhance his credibility for they erase any suspicion that the testimony was contrived or rehearsed.[15]

The records show that Socrates Fulgencio's identification of petitioners as among the perpetrators of the crime is positive, categorical, and consistent. Socrates could not have been mistaken in his identification, as the OSG stresses, because he knew petitioners since childhood. Petitioners fail to show any ill motive for Socrates to falsely accuse them of the crime or to pervert the truth. Where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[16]

As against the positive identification by Socrates Fulgencio of petitioners Taran and de Juan as among the assailants of Rocel, all that Taran and de Juan could offer is the defense of alibi and denial. Alibi is one of the weakest defenses, not only because it is inherently weak and unreliable, but more so because it can easily be fabricated and concocted. For alibi to prosper, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[17] Their concocted alibi must fail. As to their defense of denial, it cannot prevail over the positive testimony of the prosecution's eyewitness. Between the self-serving denials of petitioners and their positive identification by eyewitness Socrates Fulgencio, the latter deserves greater credence.[18]

The records show that petitioner Ureta claimed self-defense. When an accused invokes self-defense, the onus probandi is shifted to him to prove by clear and convincing evidence the elements of his defense.[19] Three requisites must concur for a plea of self-defense to prosper: (1) unlawful aggression; (2) reasonable necessity of

the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[20] For unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.[21]

We find none of the foregoing elements of self-defense present in this case. First, the trial court found that there was no unlawful aggression on the part of Rocel against Ureta, when the latter shot the former, following their brief altercation.[22] Otherwise put, there was no actual or threatened attack against Ureta that the latter had to repel. Second, recall that Rocel was unarmed. Even assuming *arguendo* that Rocel had threatened to attack Ureta, the use of a gun by the latter to repel such an attack would not be reasonable. We must also point out that it is contrary to human experience and reason for an unarmed man to attack another who is armed with a gun, particularly where the latter had several armed companions. Third, the trial court found that there was no sufficient provocation on the part of Rocel before Ureta shot him.[23] On this score, the appellate court sustained the findings of the trial court when it ruled out Ureta's theory of self-defense.[24]

We note that the autopsy report showed that Rocel did not die from the gunshot wound inflicted on him, but from multiple stab wounds. However, we also note that the Court of Appeals found that conspiracy among the petitioners was amply established. As shown in the testimony of Socrates Fulgencio, the petitioners acted in concert. Ureta shot Rocel, Taran pistol-whipped him, de Juan stabbed him, while several other unidentified persons struck him with bolos. All the foregoing acts showed a common purpose, interest, and design, thereby establishing a conspiracy among them. In conspiracy, the act of one is the act of all, hence, it is not necessary that all the participants deliver the fatal blow.[25] With conspiracy duly established, all the petitioners are guilty of murder for the death of Rocel Fulgencio. No error was committed by the appellate court in this regard.

However, there is an error concerning the penalty imposed. Under Article 248 of the Revised Penal Code, murder is punished by reclusion perpetua to death. Both are indivisible penalties. But there being no aggravating circumstance, the penalty imposable in this case is reclusion perpetua. Moreover, aside from civil indemnity of P50,000, the heirs of the victim are entitled to the award of moral damages in the amount also of P50,000, pursuant to current jurisprudence, without need of further proof other than the fact of the victim's death.

As to the offense of frustrated homicide in Criminal Case No. 3323, wherein petitioner Benedict Ureta alone is charged for gunshot injuries inflicted on complaining witness Socrates Fulgencio, we find petitioner's defense of denial untenable. As found by Dr. Stevens Fuentes, the wound inflicted on Socrates was serious. Left unattended, the injury could have caused the death of the victim. It is quite ironic that petitioners would make it appear that Socrates was the attacker, allegedly using his fallen brother's weapon. Yet, as summed up by the CA, their defense clearly showed it was Ureta who was able to get Rocel's gun. Moreover, if Socrates had attacked or shot at any one of the petitioners, why is it that none of them suffered any injury? The truth is only the brothers Rocel and Socrates were found with gunshot wounds, according to the medico-legal reports. We conclude that petitioner Ureta's defense to the charge of frustrated homicide is a mere concoction, deserving no serious consideration.

Settled is the rule that the testimony of a single witness, when credible and trustworthy, is sufficient to sustain a conviction, even in a charge of murder[26] and surely also in a charge of frustrated homicide. As earlier stated, we find the testimony of Socrates Fulgencio for the prosecution straightforward, convincing and entitled to full faith and credit. The conviction of petitioner Benedict Ureta in Criminal Case No. 3323 was properly sustained by the appellate court.

WHEREFORE, the petition is DENIED. The assailed decision dated March 26, 1997 of the Court of Appeals in CA-G.R. CR. No. 14627, is AFFIRMED with MODIFICATION. Petitioners BENEDICT URETA, VICTOR DE JUAN, AND BERNARDO TARAN are declared GUILTY of murder in Criminal Case No. 3322, and each is

hereby sentenced to suffer the PENALTY of reclusion perpetua. They are also ordered to pay jointly and severally the sum of P50,000 to the heirs of the victim, Jose Rocel Fulgencio, as civil indemnity and another sum of P50,000 as moral damages. Petitioner BENEDICT URETA is found GUILTY of frustrated homicide in Criminal Case No. 3323, and hereby sentenced to the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum. The order for him to pay the complaining witness, Socrates Fulgencio, the sum of P20,000 as compensatory damages for the latter's injuries is upheld. No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Corona, JJ., concur.

[1] Also spelled as Rossel, Rosel, Rossell and Russel in the records.

[2] Rollo, pp. 7-15. Per Galvez, J., with Ramirez and Adefuin-De la Cruz, JJ., concurring.

[3] Records, Criminal Case No. 3322, pp. 1-2. For physical injuries found, see f.n. 5, *infra*.

[4] Records, Criminal Case No. 3323, p. 1.

[5] Records, Criminal Case No. 3322, p. 275.

[6] *Id.* at 276.

[7] *Id.* at 278.

[8] Rollo, pp. 9-10.

[9] Records, Crim. Case No. 3322, p. 259.

[10] Rollo, p. 15.

[11] CA Rollo, p. 189.

[12] *Id.* at 31.

[13] *Manalili v. Court of Appeals*, G.R. No. 113447, 280 SCRA 400, 417 (1997).

[14] See *People v. Gelin and Gelin*, G.R. No. 135693, April 1 2002, p. 5, *People v. Maglente*, 306 SCRA 546, 567 (1999).

[15] *People v. Anacan*, G.R. No. 144318, April 3, 2002, p. 5, citing *People v. Albarido and Igday*, G.R. No. 102367, October 25, 2001, p. 7.

[16] *People v. Ponsaran and Ponsaran*, G.R. Nos. 13916-17, February 6, 2002, p. 11, citing *People v. Banguis*, 291 SCRA 279, 288 (1998).

[17] *People v. Ronquillo*, G.R. No. 126136, April 5, 2002, p. 16, citing *People v. Juan, et al.*, 322 SCRA 598, 616 (2000).

[18] See *People v. Ciron, Jr.*, G.R. No. 139409, March 18, 2002, p. 6, citing *People v. De Castro*, 252 SCRA 341, 351 (1996).

[19] *People v. Obordo*, G.R. No. 139528, May 9, 2002, p. 9, citing *People v. Damitan*, G.R. No. 140544, December 7, 2001, p. 7.

[20] *People v. Calabroso*, G.R. No. 126368, 340 SCRA 332, 338 (2000).

[21] *People v. Sarabia*, G.R. No. 106102, 317 SCRA 684, 693 (1999).

[22] Rollo, p. 50.

[23] *Ibid.*

[24] CA Rollo, p. 155.

[25] *People v. Cantuba, et al.*, G.R. No. 126022, March 12, 2002, p. 13, citing *People v. Catampongan*, 318 SCRA 674, 685 (1999).

[26] *People v. Hinault, et al.*, G.R. No. 143764, February 15, 2002, p. 14, citing *People v. Toyco*, 349 SCRA 385

(2001); People v. Pascual, 331 SCRA 252 (2000); People v. Pirame, 327 SCRA 552 (2000).

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