

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1 RODOLFO CONCEPCION Y PERALTA, ACCUSED-APPELLANT.

G.R. No. 136844. August 01, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Appellant seeks the reversal of the decision[1] of the Regional Trial Court of Tarlac, Branch 65, in Criminal Case No. 9776, finding him guilty of murder and sentencing him to reclusion perpetua.

On January 22, 1998, an information[2] for murder was filed with the trial court charging him with murder allegedly committed as follows:

That on or about November 24, 1997 between 10:00 and 11:00 o'clock in the evening, in Brgy. Cut-Cut II, Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court the said accused, with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously shoot with his Armalite rifle Lorenzo Galang hitting him at the different parts of his body and as a result of which said Lorenzo Galang died instantly.

CONTRARY TO LAW.

Appellant pleaded not guilty to the charge, and thereafter trial commenced.

The prosecution relied mainly on the eyewitnesses Maximo Sison, Jr., an employee of Hacienda Luisita, and Arturo Yarte, a tricycle driver, both of Barangay Cut-cut II, Tarlac City. Other prosecution witnesses were Orlando Galang, brother of the victim Lorenzo Galang, and Concordia Galang, his mother.

Both MAXIMO SISON, JR. and ARTURO YARTE testified[3] that between 10:00 and 11:00 in the evening of November 24, 1997, Lorenzo Galang, a resident of their barangay, got involved in a quarrel at the town plaza. He was brought to the barangay hall for questioning by Barangay Captain Remigio Capitli.

Shortly after, appellant Rodolfo Concepcion arrived and fired his rifle twice or thrice past the ears of Lorenzo, who was then sitting, but without injuring him. After that, however, appellant thrust the barrel of the gun against the abdomen of Lorenzo. Then there was an explosion. Lorenzo was shot in the thigh. At least three more shots were fired, hitting Lorenzo in the chest. According to Sison and Yarte, appellant shot Lorenzo deliberately. Lorenzo died instantly.

ORLANDO GALANG, the victim's brother, recalled that he arrived at the scene of the crime after Lorenzo was slain.[4] According to him, his brother was not brought to the hospital.[5] Orlando testified on the anguish he suffered for having lost his brother.[6]

CONCORDIA GALANG, mother of the victim, testified that Lorenzo worked at the Hacienda Luisita and was earning P1,000 more or less a week.[7] According to her, Lorenzo was 27 years old when he died. He was married and had two children.[8] As a result of Lorenzo's death, the Galang's incurred expenses amounting to

approximately half a million pesos.[9] Concordia Galang presented a list of these expenses amounting to P257,259,[10] but without supporting receipts.

In his defense, appellant RODOLFO CONCEPCION claimed that the shooting was only accidental. According to him, he was investigating Lorenzo for the latter's disorderly behavior at the town plaza when it happened. He said Lorenzo appeared drunk and unruly, and even verbally challenged him to fight. At this juncture, according to appellant, he fired two shots in the air, but Lorenzo grabbed the barrel of his gun. The gun accidentally fired and Lorenzo was hit.[11]

Defense witnesses ESTELITA BALUYOT and MILAGROS VILLEGAS corroborated appellant's story. They said they witnessed the incident because they were among the bystanders who saw the event happen from the time Lorenzo was brought to the barangay hall for investigation until he was shot.

Estelita and Milagros testified that Lorenzo was seated while being questioned and pacified by appellant. Appellant was then standing. All of a sudden, according to the lady-witnesses, appellant fired two warning shots in the air. Lorenzo stood up and grabbed the barrel of the gun which was then pointed upwards. When it fired, Lorenzo was hit.[12]

On November 10, 1998, the trial court rendered its decision finding appellant guilty of the crime of murder. Its fallo reads:

WHEREFORE, finding accused guilty beyond reasonable doubt of the crime of murder punished and defined by Article 248 in relation to RA 7659, accused is hereby sentenced to suffer an imprisonment of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P50,000.00 for his loss of life; P120,000.00 as expected income; P100,000.00 as moral damages; and P10,000.00 as attorney's fees.[13]

Seasonably, appellant filed his notice of appeal. In his brief, he makes but one assignment of error:

THE LOWER COURT GRAVELY ERRED IN NOT FINDING THAT THE INJURIES SUSTAINED BY THE DECEASED WERE UNINTENTIONALLY INFLICTED WHILE ACCUSED-APPELLANT WAS IN THE COURSE OF PERFORMING HIS LAWFUL DUTY AS A POLICE OFFICER.[14]

The sole issue in this case is whether appellant is exempt from criminal liability. Under Article 12 (4) of the Revised Penal Code, among those exempted from criminal liability is:

Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

Well settled is the rule in criminal cases, that the prosecution has the burden of proof to establish the guilt of the accused.[15] However, once the defendant admits the commission of the offense charged, but raises an exempting circumstance as a defense, the burden of proof is shifted to him. By invoking mere accident as a defense, appellant now has the burden of proving that he is entitled to that exempting circumstance under Article 12 (4) of the Code.

The existence of accident must be proved by the appellant to the satisfaction of the court. For this to be properly appreciated in appellant's favor, the following requisites must concur: (1) that the accused was performing a lawful act with due care; (2) that the injury is caused by mere accident; and (3) that there was no fault or intent on his part to cause the injury.[16] Appellant must convincingly prove the presence of these elements in order to benefit from the exempting circumstance of accident. However, his defense utterly failed to discharge this burden. Thus, we find no reversible error in the judgment of the trial court.

By appellant's own testimony, the victim was unarmed. In contrast, appellant had an armalite and a handgun. It is

highly inconceivable that an unarmed man could pose bodily harm to another who is heavily armed.

We note, that appellant's gun discharged several shots that hit vital parts of the victim's body. Was the discharge purely accidental? We don't think so. As observed by the trial court, recklessly appellant had put his finger on the trigger of his cocked and loaded rifle. In that state, with the slightest movement of his finger,[17] the rifle would fire readily. And it did not just once but several fires.

Appellant claims that the victim Lorenzo, who was drunk at the time, was brought to the barangay hall for investigation. Lorenzo became unruly while being questioned, so appellant was constrained to fire two warning shots in the air to frighten him. However, the latter stood up and immediately grabbed the nozzle of the gun and pulled it towards him. The gun accidentally went off and hit Lorenzo in the body. To buttress his claim, appellant rationalizes that he could have killed Lorenzo immediately while creating trouble at the plaza, if that was indeed his intention. Since he did not, appellant posits that there was no intent on his part to kill Lorenzo.

But we note patent inconsistencies in his claims. He testified on query by the trial court that when he was pacifying the victim, his rifle was hanging on his shoulder on a swivel, with its barrel pointed to the floor. At that instance, the victim grabbed the barrel of the gun which accidentally fired.[18] However, on direct examination by his defense counsel, he testified that the victim grabbed his rifle only after he had fired the two shots in the air.

His claims do not square with and could not overcome the testimony of prosecution witnesses on this score. Note that Maximino Sison, Jr., an eyewitness, categorically declared that he saw appellant shoot the victim with an M-16 armalite.[19] On direct examination, Sison testified as follows:

Q: Earlier, you stated at the time you arrived at the barangay hall, Rodolfo Concepcion was eight (8) meters away from Lorenzo, at that time Rodolfo Concepcion shot Lorenzo Galang, how far is Rodolfo Concepcion from Lorenzo Galang?

A: He was near him because he approached him, sir. He was very near.

X X X

Q: How many times did Rodolfo Concepcion shot (sic) Lorenzo Galang?

A: The first firing were two (2) shots, sir.

Q: Was Lorenzo Galang hit?

A: No sir.

Q: At the time Rodolfo Concepcion fired these two (2) shots, according to you, it was near his left ear?

A: Yes, sir.

Q: How far is the barrel from the ear of Lorenzo Galang when he fired those two shots? Will you indicate by pointing your left ear?

A: Less than a foot, sir.

Q: When you are referring to the barrel of the gun which was pointed at the left ear of Lorenzo, how far is the barrel of the gun from the ears of Lorenzo?

A: The barrel was "lampas tainga" so Lorenzo was not hit, sir.

Q: What happened after that?

A: He put down and thrust the barrel of the gun toward the stomach of Lorenzo Galang, sir.

Q: After Rodolfo Concepcion thrust the barrel of his gun towards the abdomen of Lorenzo Galang what else transpired?

A: Because he was hurt he tried to push the barrel of the gun, sir.

Q: What did Lorenzo Galang use in pushing the barrel when Rodolfo Concepcion thrust it towards the stomach?

A: He just pushed a little bit to remove the barrel of the gun from his abdomen, sir.

Q: After that what happened?

A: After pushing the barrel of the gun simultaneously the firing and hitting Lorenzo at his right thigh, sir.

Q: What did Lorenzo Galang do after he was hit on the right thigh?

A: Because Lorenzo was seated, he was lifted from his seat, sir.

Q: Incidentally at that time when Rodolfo Concepcion placed the barrel of his gun about a distance away from the ear of Lorenzo, how far was Lorenzo Galang positioned that time?

A: He was leaning on the chair sir.

Q: What about Rodolfo Concepcion how was he positioned when he fired those first two shots?

A: He was standing, sir.

Q: Now after the right thigh of Lorenzo Galang was hit by third shot what else transpired?

A: He again thrust the barrel of his gun on the chest or towards the chest of Lorenzo and simultaneously fired the gun.[20]

The autopsy report corroborates Sison's testimony that the victim had three gunshot wounds: one at the right nipple, another at the mid-femur (thighbone), and another above the knee.[21] Likewise, Sison's declaration on material details coincide with those narrated by Arturo Yarte, a barangay tanod who also witnessed the shooting incident. There is no proof of ill motive on the part of Sison and Yarte that could have impelled them to falsely testify against appellant. In fact, Sison was appellant's childhood friend.[22]

The trial court found that treachery attended the commission of the crime. As hereafter explained, however, in this case treachery is only an aggravating and not a qualifying circumstance.

To constitute treachery (alevosia), two conditions must be present: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[23] Here, treachery was clearly present considering that the victim was totally unprepared for the barrage of gunshots made by appellant. It was undisputed that the victim was brought to the barangay hall for questioning. He had submitted himself to the authority of the barangay officials and to the police authorities. He was seated, thereby excluding any insinuation that he was violent and unruly. He was weak from drinking at the time so that he had very little physical ability to cause harm to anyone, more so in the presence of the barangay captain, barangay tanod and a police officer in the person of appellant.[24]

From the circumstances of the case, the Court agrees with the prosecution that appellant consciously and purposely adopted the means of attack to insure the execution of the crime without risk to himself.

However, we note that treachery, though stated in the information, was not alleged with specificity as qualifying the killing to murder. Following *People vs. Alba*, G.R. No. 130523, January 29, 2002, the information should state

not only the designation of the offense and the acts and omissions constituting it, but should also specify the qualifying and aggravating circumstances. Since the information in this case failed to specify treachery as a circumstance qualifying the killing to murder, under the present Revised Rules of Criminal Procedure,[25] treachery has to be considered a generic aggravating circumstance only. Consequently, the crime committed by appellant is homicide and not murder.

Further, we find that the trial court misappreciated as an aggravating circumstance the fact that appellant was a policeman on duty at the time of the killing. The information charging appellant bears no mention of this aggravating circumstance. Pursuant to the Revised Rules of Criminal Procedure that took effect on December 1, 2000, every complaint or information must state not only the qualifying but also the aggravating circumstances.[26] This provision may be given retroactive effect in the light of the well-settled rule that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage.[27] The aggravating circumstance of abuse of official position, not having been alleged in the information, could thus not be appreciated to increase appellant's liability.

At any rate, appellant's immediate surrender to police authorities after the shooting should be credited in his favor as a mitigating circumstance, pursuant to Article 13 (7) of the Revised Penal Code.[28]

In sum, we find appellant guilty of homicide. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. There being one mitigating circumstance of voluntary surrender and one aggravating circumstance of treachery, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, appellant's sentence should be within the range of prision mayor as minimum, and the medium period of reclusion temporal as maximum.

As to the award of damages, the trial court offered no explanation for the award of P120,000 as expected income. This figure is without basis. The victim's lost earnings are to be computed according to the formula adopted by the Court in several decided cases, to wit:

Net earning capacity = $\frac{2}{3} \times (80 - \text{age of the victim at the time of his death}) \times \text{annual net income which would have been received by the heirs for support}$ [29]

Lorenzo was 27 years old at the time of his death. His mother testified that he was earning P1,000 a week during his lifetime or an annual income of P48,000. In the absence of proof of his living expenses, his net income is deemed to be 50 percent of his gross income.[30] Using the above formula, we fix the indemnity for loss of earning capacity of Lorenzo at P848,000, thus:

Net earning capacity = $\frac{2}{3} (80 - 27) \times [P48,000 - P24,000]$
 $= \frac{2}{3} (53) \times P24,000$
 $= 35.33 \times P24,000$
 $= P848,000$

We find the award of P50,000 as death indemnity to the heirs of the deceased to be in accordance with existing jurisprudence.[31] This civil indemnity is automatically granted to the heirs of the victim without need of any evidence other than the fact of the commission of the crime.[32] As for moral damages, the amount should be reduced to P50,000 also in accordance with existing jurisprudence.[33] The award of P10,000 as attorney's fees is sufficient and justified.

WHEREFORE, the decision of the Regional Trial Court, Tarlac, Branch 65, in Criminal Case No. 9776, convicting appellant Rodolfo Concepcion of the crime of murder, is hereby **AFFIRMED** with **MODIFICATION**. Appellant is found guilty of the crime of homicide and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum and fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal as maximum. He is also ordered to pay the heirs of the victim the amount of P50,000 as civil indemnity, P50,000 as moral damages, P848,000 as lost earnings, P10,000 as attorney's fees, and the costs.

SO ORDERED.

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

[1] Rollo, pp. 53-57.

[2] Id. at 4-5.

[3] TSN, April 15, 1998, pp. 2-9 and TSN, May 5, 1998, pp. 3-21.

[4] TSN, June 2, 1998, p. 5.

[5] Ibid.

[6] Ibid.

[7] TSN, July 7, 1998, p. 4.

[8] Ibid.

[9] Id. at 5.

[10] TSN, October 14, 1998, p. 3.

[11] TSN, November 5, 1998, pp. 2-10.

[12] TSN, October 15, 1998, pp. 2-13; TSN, October 20, 1998, pp. 2-8.

[13] Rollo, p. 57.

[14] Id. at 48.

[15] Balanay vs. Sandiganbayan, G.R. No. 112924, 344 SCRA 1, 10 (2000).

[16] People vs. Mat-an, G.R. No. 91115, 216 SCRA 843, 849 (1992).

[17] Records, p. 78.

[18] TSN, November 5, 1998, p. 10.

[19] TSN, April 15, 1998, p. 6.

[20] TSN, April 15, 1998, pp. 6-7.

[21] Records, p. 23.

[22] TSN, April 15, 1998, p. 2.

[23] *People vs. Mabuhay*, G.R. No. 87018, 185 SCRA 675, 680 (1990) cited in Reyes, *The Revised Penal Code*, Book I, 13th Ed., p. 429.

[24] Records, p. 78.

[25] Sec. 8, Rule 110. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9, Rule 110. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[26] *Ibid*.

[27] *People vs. Arrojado*, G.R. No. 130492, 350 SCRA 679, 696 (2001).

[28] ART. 13. Mitigating circumstances. – The following are mitigating circumstances:

x x x

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

x x x

[29] *People vs. Barnuevo*, G.R. No. 134928, September 28, 2001, p. 10, citing *People vs. Espanola*, G.R. No. 119308, 271 SCRA 689, 717 (1997) and *People vs. Aspiras*, G.R. No. 121203, 330 SCRA 479, 495 (2000).

[30] *People vs. Barnuevo*, *supra*, note 29 at 10.

[31] *Metro Manila Transit Corporation vs. Court of Appeals*, G.R. Nos. 116617 and 126395, 298 SCRA 495, 506-507 (1998).

[32] *People vs. Obello*, G.R. No. 108772, 284 SCRA 79, 95 (1998).

[33] *People vs. Salva*, G.R. No. 132351, January 10, 2002, p. 12; *People vs. Guzman*, G.R. No. 132750, December 14, 2001, p. 14; *People vs. Herrera*, G.R. Nos. 140557-58, December 5, 2001, p. 23.

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