

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT ARANETA A.K.A. GILBERT ARANETA ALIAS GILBERT, ACCUSED-APPELLANT.

G.R. No. 137604. July 03, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal interposed by accused Robert Araneta a.k.a. Gilbert Araneta (alias Gilbert) from the Decision[1] dated October 6, 1998 of the Regional Trial Court (RTC) of Malabon, Metro Manila, Branch 72 in Criminal Case No. 16989-MN finding him guilty beyond reasonable doubt of the crime of murder.

The accused together with Gerry Silva @ Sitoy (SILVA) and Alexander Gulane y Oledan @ Armando Gulane y Oledan @ Alex (GULANE) were charged with the crime of murder in an amended information[2] that reads as follows:

"That on or about the 21st day of December, 1995, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, conspiring, confederating and helping one another, with intent to kill, treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously attack, assault and shoot LEO LATOJA, hitting the latter on the different parts of his body, thereby inflicting upon the victim gunshot wounds which caused his immediate death."

Upon arraignment on March 16, 1998, the accused with the assistance of counsel entered a plea of not guilty.[3]

During the trial, the prosecution and the defense agreed to adopt the testimonies of the prosecution witnesses, Estelita Latoja and Dr. Cristina Preyra, given during the separate trial of SILVA and GULANE[4] subject to additional questions on direct examination and full cross-examination.[5]

Based on the testimonies of the prosecution witnesses, the trial court culled the following facts:

"On December 21, 1995, at about 5:00 o'clock in the morning, near the Immaculate Memorial Park in Bagong Silang, Navotas, Metro Manila, Estelita Latoja gave her son Leo, who was already on board a tricycle on his way to work, transportation money. Having done so, Estelita took about two steps on her way back home, it did not take long when she heard a gunshot. Estelita, who was then only about a meter away from Leo, saw Silva who was with two other companions named Araneta and Gulane, holding a gun still directed at Leo.

Estelita shouted to Silva "Huwag, Huwag. Anak ko iyan". Leo, on the other hand, said to Silva "Huwag. Hindi tayo magkatalo." Leo's wife, Shirley, who was present at that time, was not able to say or do anything.

Estelita approached Silva who hit her at the left side of the head as he pushed her aside and thereafter fired his gun to (sic) Leo. Estelita added that Gulane was also armed with a gun and that he fired about four shots at Leo who was hit thereby. Araneta also fired his gun at Leo. Thereafter, the three fled."[6]

On October 6, 1998, the RTC found the accused guilty beyond reasonable doubt of the crime charged the

dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Robert Araneta also known as Gilbert Araneta alias Gilbert guilty beyond reasonable of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code. In the absence of any other aggravating circumstance, he is hereby sentenced to suffer the prison term of reclusion perpetua, together with all the accessory penalties thereof.

Accused Araneta is also ordered to pay his proportionate share in the costs and in the damages awarded to Estelita Latoja under the decision of this Court in this case as against accused Silva and Gulane which will be equivalent to 1/3 of the total amounts provided in said decision." [7]

Hence this appeal where the accused-appellant assigns the following assignment of error:

"THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT ROBERT ARANETA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED AND PENALIZED UNDER ARTICLE 248 OF THE REVISED PENAL CODE, AS AMENDED." [8]

The accused-appellant anchors his defense on mistaken identity, denial and alibi.

In support of his defense, the accused-appellant maintains that the RTC erred in giving full-faith and credence to the testimony of the lone prosecution witness, Estelita Latoja (ESTELITA). The accused-appellant maintains that the RTC failed to consider several documents, which establish that Robert Araneta is not the same as Gilbert Araneta whom ESTELITA allegedly saw shoot her son. Considering that she could have been mistaken in her identification of the accused-appellant, her credibility comes into question.

After a meticulous review of the evidence, we resolve to uphold the RTC's judgment of conviction.

The accused-appellant's claim that ESTELITA was not a credible witness and that her testimony suffers from incredibility deserves scant consideration.

We have carefully gone over the records and find nothing in her account of the events that would show that her testimony was not credible. On the contrary, ESTELITA made a clear narration of the shooting of her son in her testimony. According to ESTELITA, at around 5:00 a.m. of December 21, 1995, a co-worker of her son, Leo Latoja (LEO), went to their house to ask for transportation money for Leo who left their house earlier that morning. LEO could not ask for the money himself since he was avoiding his one-year-old child who would always insist on going with him. LEO's wife, Shirley then proceeded to LEO who was waiting inside a tricycle parked some two hundred (200) meters away from their house. Shirley however failed to give LEO the money since she forgot her purse. LEO instead asked ESTELITA, who happened to follow Shirley to the place where LEO was, for the money. After giving LEO some money, ESTELITA turned her back from LEO and had proceeded to take two (2) steps away from him when she suddenly heard a gunshot. She turned her head and saw SILVA accompanied by two armed men whom she later identified as GULANE and the accused-appellant poking a gun at her son. Upon seeing this, she yelled at SILVA "wag, wag, anak ko yan" while Leo begged "wag di tayo talo." Thereafter, ESTELITA approached SILVA in order to defend her son but the latter hit her on the head and pushed her aside. SILVA, GULANE and the accused-appellant continued to shoot LEO who was now sprawled on the pavement oozing with blood. Then, the three fled the scene using a small alley. [9]

Dr. Rosaline Cosidon, who performed the autopsy on the body of the victim, testified that the victim died of multiple gunshot wounds. [10]

ESTELITA positively identified the accused-appellant and pointed to him as one of her son's assailants as follows:

"FISCAL ACUÑA:

Madam Witness, in your testimony before this Court during the trial of accused Gerry Silva, you testified that on December 21, 1995 at 5:00 o'clock in the morning near the Immaculate Memorial Park located at Bagong Silang, Navotas Metro Manila, you saw not only Gerry Silva but also Alex Gulane and Gilbert Araneta shot to death your son repeatedly and I am referring to your son Leo Latoja. Now, the question is: If you see Gilbert Araneta again, will you be able to identify him?

A:

Yes, sir, I know him.

Q:

Will you please look around this courtroom and point out to us Gilbert Araneta if you see him inside?

INTERPRETER:

(Witness pointing to a person who was asked to stand up and when asked his name, he answered Robert Araneta).

FISCAL ACUÑA:

Why are you sure that it was this person Gilbert Araneta who announced his name as not Gilbert but Robert Araneta, as one of the companions of Gerry Silva in shooting to death your son Leo Latoja?

A:

I have known him for a long time.

Q:

And how long have you known, you said you have known Robert a.k.a. Gilbert Araneta for a long time. Can you give us a number of years, how many?

A:

Five years.

FISCAL ACUÑA:

That's all with the witness."^[11]

The accused-appellant's claim that ESTELITA was mistaken in naming him as "Gilbert Araneta" and not "Robert Araneta" does not destroy her credibility and is not sufficient to exculpate him. For even assuming that the accused-appellant's real name is Robert, it is sufficient that she was positive as to his physical identity as a participant in the shooting of her son from her own personal knowledge for purposes of identifying him in the present case.^[12] Furthermore, this Court has ruled on countless occasions that the trial court is in the best position to determine facts and to assess the credibility of witnesses as it is in a unique position to observe the witnesses' deportment while testifying which opportunity the appellate court is denied on appeal; this Court will respect the findings and conclusions of the trial court provided that they are supported by substantial evidence on record.^[13] In the case at bar, we find no cogent reason to disturb the trial court's appreciation of the evidence and find no basis therein to rule that ESTELITA's testimony was not credible. Besides, the appellant has failed to prove any improper motive on the part of ESTELITA to falsely impute such a terrible crime to herein accused-appellant. The testimony of a single witness, when credible and trustworthy, is sufficient to convict and

must be given full faith and credence when no reason to falsely testify is shown.[14]

Given the positive identification made by the lone prosecution witness, the accused-appellant's uncorroborated defense of denial and alibi must fail. The defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[15] A positive identification of the accused made by an eyewitness prevails over such a defense.[16] Likewise, the denial of accused-appellant cannot prevail over the positive declarations of the prosecution witnesses that he participated in the commission of the crime. Like the defense of alibi, a denial is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that the accused-appellant was at the scene of the incident and was one of the victim's assailants and perpetrator of the crime.[17]

We now come to the imposition of the proper penalty.

Considering that the participation of the accused-appellant in the killing of Leo Latoja has been proven beyond reasonable doubt and considering further that the convictions of his co-accused, SILVA and GULANE, have been sustained by this Court in *People vs. Silva*, [18] we adopt the finding in said case that homicide was committed as well as the imposition of penalty therein. The Court's ratiocination regarding the absence of treachery and evident premeditation is in point as follows:

"The trial court reasoned that the killing was attended by treachery because the suddenness of the attack caught Leo offguard thus preventing him from putting up any defense. We ruled in a litany of cases that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. The same degree of proof to dispel any reasonable doubt is required before treachery may be considered either as an aggravating or qualifying circumstance. Further, treachery must be based on some positive conclusive proof and not only upon hypothetical facts or on mere suppositions or presumptions.

The trial court erred when it presumed that the killing was qualified by treachery although the record shows that the witness did not see the commencement of the assault. Estelita testified that she noticed accused-appellants only after she heard the first shot -

Q:

Madam Witness, you mentioned that your son immediately before the shooting incident was with his wife?

A:

Yes, sir.

Q:

And while your son was with his wife in the tricycle or pedicab do you know where the accused then?

A:

No, sir.

Q:

In what stage of the incident when you first noticed Silva?

A:

Upon hearing the first shot.

Q:

What about Gulane?

A:.

I saw them together.

Q:

How about Gilbert?

A:

The three were together.

Q:

So, in other words, you first noticed them when you heard the first shot?

A:

Yes, sir.

Q:

And do I get it right from you that you have not seen them prior to the first shot?

A:

No, sir.

In her earlier testimony, Estelita explained that it was the first shot that prompted her to turn her head and it was only then that she saw Gerry Silva pointing his gun at her son who was already bloodied. These statements are fraught with possibilities. Nagging doubts would crop up as to how the three (3) assailants started the assault considering that there was an interval of time from the moment Estelita's back was towards Leo until she heard the first shot. Before that she did not notice the presence of accused-appellants. One can argue that between the time when Estelita's back was turned from the victim after she had taken about two (2) steps away and the first shot, there was a lapse of more or less four (4) seconds. No other logical conclusion then could be drawn but that the attack was sudden and unexpected. But this is not that simple. Where all indicia tend to support the conclusion that the attack was sudden and unexpected but there are no precise data on this point, treachery cannot be taken into account. It can in no way be established from mere suppositions, drawn from the circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery.

In the same manner, evident premeditation cannot be appreciated to qualify the killing to murder in the absence of direct evidence of the planning and preparation to kill or when the plan was conceived. This trial court overlooked when it observed, as earlier mentioned, that the time when the attack was made, being after daybreak, precluded an accidental encounter between Leo and his assailants. It would require planning on the part of the assailants on when and how they would accomplish their criminal intent. Hence the presence of evident premeditation according to the trial court.

The reasoning of the trial court is oft-tangent and cannot be sustained. There is simply no causal connection between the time when the crime was committed, which was at daybreak, and the possibility of any accidental meeting between the protagonists. Premeditation cannot be appreciated if the evidence does not show when the plan to kill was hatched, or how much time had elapsed before it was carried out. There must be a basis for determining whether the accused had sufficient time between the inception of the plan and its fulfillment to dispassionately consider and accept its consequences. The records do not reveal a jot of evidence showing the time that accused-appellants conceived the plan and made preparations to kill Leo Latoja. The mere fact that

the victim was attacked just after daybreak cannot give rise to the presumption that the killing was premeditated. The finding by the trial court is merely an inference drawn from the surrounding circumstances of the case which is simply devoid of any factual mooring.

Where the attack was not treacherous, the number of aggressors would constitute only abuse of superiority. Thus considering that the victim when assaulted was unarmed, he was, therefore, no match to his three (3) adversaries who were all armed with handguns. Our jurisprudence is exemplified by the holding that where three (3) armed persons attacked the defenseless victim but there was no proof as to how the attack commenced and treachery was not proved, the fact that there were three (3) armed assailants would constitute abuse of superior strength.

Absent the qualifying circumstance of treachery or evident premeditation in the killing of the victim, the crime committed can only be homicide, not murder. With the generic aggravating circumstance of abuse of superiority and the absence of any mitigating circumstance, the penalty for homicide, which is reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years, the same to be imposed in its maximum period the range of which is seventeen (17) years four (4) months and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum shall be taken from the penalty next lower in degree, which is prision mayor, the range of which six (6) years and one (1) day to twelve (12) years, in any of its periods, while the maximum shall be taken from the maximum of the imposable penalty in view of the generic aggravating circumstance of abuse of superiority."^[19]

WHEREFORE, the appealed Decision of the trial court is hereby AFFIRMED with MODIFICATION that the accused-appellant Robert Araneta a.k.a. Gilbert Araneta alias Gilbert is found GUILTY beyond reasonable doubt of the crime of Homicide aggravated by abuse of superior strength and is hereby sentenced to six (6) years, four (4) months and ten (10) days of prision mayor minimum as minimum to eighteen (18) years, two (2) months and twenty (20) days of reclusion temporal maximum as maximum.

Costs against the accused-appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Judge Benjamin M. Aquino, Jr..

[2] Rollo, p. 8.

[3] Record, p. 30.

[4] The convictions of Silva and Gulane were affirmed by this court in *People vs. Silva*, G.R. No. 131591 dated December 29, 1999.

[5] Decision, p. 18.

[6] Decision, pp. 3-4; Rollo. pp. 18-19.

[7] Decision, p. 8; Rollo, p. 24.

[8] Appellant's Brief, p. 1; Rollo, p. 41.

[9] T.S.N., November 15, 1996, pp. 4-14.

[10] T.S.N., March 14, 1997, p. 3.

- [11] T.S.N., May 25, 1998, pp. 4-6.
- [12] People vs. Tejero, 308 SCRA 660 at p. 680 (1999)
- [13] People vs. Silvestre, 307 SCRA 68 at p. 82 (1999)
- [14] Ibid. at p. 83.
- [15] People vs. Abdul, July 13, 1999, G.R. No. 128074 at p. 6.
- [16] Ibid.
- [17] Ibid. at p. 18.
- [18] G.R. No. 131591, December 29, 1999.
- [19] People vs. Silva, Supra at pp. 8-12.

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