

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALTAZAR AMION Y DUGADUGA, ACCUSED-APPELLANT.

G.R. No. 140511. March 01, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

SPO2 Baltazar Amion y Dugaduga, a member of the Bacolod City Police Office (BCPO) was charged with the crime of Murder for the death of PO3 Victor Vafloor, a member of the Escalante Police Station, under the following Information[1]:

"That on or about the 24th day of January, 1994, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without any justifiable cause or motive, being then armed with an M16 Armalite Rifle, with intent to kill and by means of treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously assault, attack and shoot with said firearm one Victor Vafloor, Jr. thereby inflicting upon the person of the latter the following wounds, to wit:

- Wound, gunshot (entrance) roughly oval in shape, 0.7 cm. in diameter surrounded by a contused-abraded collar 0.3 cm. in width almost evenly distributed around the gunshot wound located at the right deltoid region directed diagonally medially upward penetrating the subcutaneous tissue and muscles then to the thoracic cavity and making a wound (exit) stellate in shape 1.7 cm. x 1.2 cm. located at the right cheek.

- Wound gunshot (entrance) roughly oval in shape 0.7 cm. in diameter surrounded by a contused-abraded collar 0.3 cm. in width almost evenly distributed around the gunshot wound located at the right axillary region directed forward medially laterally penetrating the subcutaneous tissues and muscles then to the thoracic cavity involving the lungs, heart blood vessels, then make a wound (exit) stellate in shape 1.7 cm. x 1.2 cm. located at the left axillary region.

- Wound, gunshot (entrance) roughly oval in shape 0.7 cm. in diameter surrounded by a contused-abraded collar 0.3 cm in width almost evenly distributed around the gunshot wound located at the left infrascapular region directed forward medially diagonally upward penetrating the subcutaneous tissues, muscles and then to the thoracic cavity involving the lungs and heart then making a wound (exit) stellate in shape 1.5 cm. x 1.2 cm. located at the suprascapular region right.

- Wound, gunshot (entrance) roughly oval in shape 0.7 cm. in diameter surrounded by a contused-abraded collar 0.3 cm. in width almost evenly distributed around the gunshot wound located at the left lumbar region along the midspinal line directed forward medially diagonally upward penetrating the subcutaneous tissues, muscles and then to the abdominal cavity involving the left kidney, liver and stomach then making a wound (exit) at the right infrascapular region.

- Contusion-abrasion 2 cm. long along the face, fronto-parietal region, right of the head with fracture of the right side of the face and the skull and laceration of the brain substance.

Cause of death:

Cardio-respiratory arrest, shock, hemorrhage, severe, fracture of the skull, rupture of the lungs and heart due to multiple gunshot wounds.

which were the direct and immediate cause of his death, to the damage and prejudice of his heirs, as follows:

1. As indemnity for the death of the victim P50,000.00
2. As indemnity for the loss of earning capacity of the victim P88,800.00
3. As moral damages .P10,000.00

Act contrary to law."

The prosecution presented: 1) Police Supt. Edmundo Sanicas of the BCPO; 2) PO3 Richard Dejas, 34, a member of the Escalante Police Station; 3) SPO2 Virgilio Pachoro, a member of the BCPO; 4) Mrs. Antoinietta Vaflor, widow of the late PO3 Victor Vaflor; 5) Dr. Johnnie V. Aritao, City Health Officer, Bacolod City Health Office; and 6) SPO3 Francisco Castidad, a member of the BCPO and the officer-in-charge of its Property Division.

The defense presented accused Amion and his companion at the time of the incident, Ricardo Divino.

The trial court[2] found Chief Inspector Sanicas and PO3 Dejas to be credible witnesses, and rejected the testimony of CVO Ricardo Divino. Finding the evidence against the accused as "simply overwhelming", the court rendered judgment as follows:

"FOR ALL THE FOREGOING, the Court finds the accused SPO2 Baltazar Amion y Dugaduga, GUILTY beyond reasonable doubt as Principal by Direct Participation of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659. The following ordinary aggravating circumstances were present in the commission of the crime:

- Abuse of public office due to the use of his service firearm in the killing;
- Use of motor vehicle which facilitated the commission of the crime; and
- Aid of armed men in the commission of the crime.

There is present only one (1) mitigating circumstance of voluntary surrender.

The accused is therefore sentenced to suffer the MAXIMUM PENALTY OF DEATH. He is also sentenced to pay by way of civil liability, the following:

- To the heirs of the late PO3 Victor Vaflor, the sum of P50,000.00 as death indemnity and P88,800.00 as compensatory damages;
- To Mrs. Antoinietta Vaflor, the sum of P10,000.00 as moral damages."

The case is before us on automatic review.

Accused-appellant's brief raises the following assignment of errors:

"I.

THE HONORABLE TRIAL COURT ERRED IN UPHOLDING THE TESTIMONIES OF PO3 RICHARD DEJAS AND CI EDUARDO SANICAS WHICH CONTAINED STATEMENTS THAT WERE NOT ONLY FALSE BUT HIGHLY IMPROBABLE;

II.

THE HONORABLE TRIAL COURT ERRED IN ITS FINDINGS OF FACTS, ON SEVERAL MATTERS, AS WILL BE DISCUSSED AND POINTED OUT LATER IN THIS BRIEF;

III.

THE HONORABLE TRIAL COURT ERRED IN DISCOUNTING THE CLEAR EVIDENCE OF SELF-DEFENSE, BASED ON THE LAWS AND JURISPRUDENCE APPLICABLE."^[3]

After a very careful review of the evidence, we resolve to affirm the prosecution's case which rested mainly on the testimonies of two eyewitnesses, namely Chief Inspector Edmundo Sanicas and PO3 Richard Dejoras.

Sanicas' testimony as summarized by the trial court is as follows:

"(On) January 24, 1994, Chief Inspector (henceforth CI) Edmundo Sanicas was at his house in Mansilingan, Bacolod City. As of that date, CI Sanicas has no specific assignment as he had just been relieved of his duty as Chief of Police of the town of E. B. Magalona. CI Sanicas is 51 years of age, married and has been a policeman for nearly thirty (30) years.

CI Sanicas told the Court that at about 1:00 P.M. of that day, January 24, 1994, two (2) policemen from Escalante town came to see him to deliver the message of the Chief of Police of that town for a coordination with him concerning his projected trip to Manila regarding a police training program. These two (2) policemen in their police uniform, came on board an Escalante patrol car together with a civilian companion. He came to know these policemen later as PO3 Victor Vafloor and PO3 Richard Dejoras both of the Escalante Police Station.

After they had a talk inside his house, CI Sanicas conducted the two (2) Escalante policemen as they left his house. As he emerged from the steel gate following the two (2) policemen, he saw SPO2 Baltazar Amion, only about a meter away from PO3 Vafloor. SPO2 Amion started shooting at PO3 Vafloor with an armalite rifle as the latter was about to open the door of the Escalante police car. PO3 Vafloor fell. CI Sanicas attempted to take away the armalite rifle but SPO2 Amion refused to surrender it. SPO2 Amion circled around the Escalante patrol car followed by CI Sanicas. Upon reaching the fallen PO2 Vafloor, Amion again fired shots at him.

For the second time, CI Sanicas attempted to disarm the accused but the latter refused to surrender the armalite rifle. For the second time, the accused circled the Escalante police car followed by CI Sanicas. CI Sanicas could not distinctly recall whether shots were fired when the accused approached his victim for the second time.

PO3 Vafloor was loaded on the Precinct 7 police car upon instruction of CI Sanicas to be brought to the hospital. On the way, the police car driven by the accused passed by Precinct 7 and both the accused and CI Sanicas disembarked. It was here where the accused finally surrendered his armalite rifle to CI Sanicas. When the victim eventually reached the Bacolod Sanitarium Hospital, he was declared Dead on Arrival (DOA)."^[4]

The summary of the testimony of PO3 Richard Dejoras is as follows:

"PO3 Dejoras is a regular member of the Escalante Police Station. He also resides at Escalante, and he and the accused were immediate neighbors in Escalante before the accused transferred to Bacolod City.

PO3 Dejoras testified that in the morning of January 24, 1994, he and PO3 Victor Vafloor, also a member of the Escalante Police Station, was ordered by the Chief of Police of that town to proceed to Bacolod City to accomplish the following missions:

- To submit the Performance Evaluation Report at the PNP Headquarters in Bacolod City;
- To submit calamity loan applications of Escalante policemen with the GSIS; and
- To see Chief Inspector Edmundo Sanicas of the BCPO to inquire about a training program.

They rode on the police car of Escalante and arrived at Bacolod City at about 10:00 A. M. After they accomplished their first two (2) missions, they ate their lunch and went on to locate the residence of Chief Insp. Sanicas which is in Mansilingan, Bacolod City. Both he and Vaflor were in their police uniform and both carried handguns which were their service firearms.

It was PO3 Vaflor who drove the Escalante police car which was a Nissan Sentra automobile. Aside from the two (2) of them, they have a civilian companion who is a friend of PO3 Vaflor. Since they do not know the specific location of the house of CI Sanicas in Brgy. Mansilingan, they passed by Precinct 7 and made an inquiry. Having obtained direction from the police officers of Precinct 7, including the accused himself who even gave them direction, they were able to locate the house of CI Sanicas. PO3 Vaflor parked the car right in front of the steel gate of the perimeter fence of the house of CI Sanicas.

After they had a talk with CI Sanicas and accomplished their mission, they went back to their police car. He was the first to step out of the steel gate followed by PO3 Vaflor and by CI Sanicas who conducted them towards their car. As PO3 Vaflor was about to open the door of the police car on the driver's side, the accused who was only about four (4) meters away, shot him with an armalite rifle. PO3 Vaflor fell. He tried to intervene and pacify the accused but to no avail. The accused even threatened him. On board the Precinct 7 police car parked just immediately behind the Escalante police car, he saw Ladislao Amion, uncle of the accused seated at the front seat, while a companion who was holding an armalite rifle, pointed the firearm in his direction.

The accused shot PO3 Vaflor several times at intervals of from thirty (30) seconds to one (1) minute. During an interval in the shooting, CI Sanicas tried to intervene and disarm the accused but he refused to surrender his firearm and instead fired more shots at his fallen victim.

PO3 Dejas declared that the attack was so sudden and it took all the three (3) of them by surprise. After the shooting, CI Sanicas took away PO3 Vaflor's service firearm which was still tucked in its holster."^[5]

On the other hand, accused-appellant's version is as follows:

"Testifying for his own behalf, the accused declared that he went on a roving patrol with CVO (Civilian Volunteer Organization) Ricardo Divino at about 12:30 P. M. on January 24, 1994. When they reached the vicinity of the house of CI Sanicas, they noticed a car parked at the middle of the road in front of the house of CI Sanicas. Accused Amion said he disembarked from the police car for the purpose of requesting the driver of the blocking car to clear the way. He brought along with him his armalite rifle which was slung on his shoulder. As he approached the gate of the premises of the house of CI Sanicas, PO3 Vaflor emerged from the house, so he greeted him by saying in the vernacular, "you are here". PO3 Vaflor responded by saying, "so what". He saw PO3 Vaflor making a motion to pull out his sidearm, so he levelled his armalite rifle in his direction and the armalite fired.

The accused Amion said that he could not fully explain what happened on that early afternoon of January 24, 1994. He said he was almost in a state of shock when he saw PO3 Vaflor as it was the latter who killed his uncle, Rodito Amion. He witnessed the killing in the town of Escalante in 1986. He said he pleaded to PO3 Vaflor to spare the life of his uncle but he was not heeded. That afternoon, in front of the house of CI Sanicas, he immediately fired his armalite rifle when he saw PO3 Vaflor going for his gun."^[6]

Richard Divino corroborated Amion's testimony. He was with the latter on a roving patrol and as they were about to pass in front of the house of CI Sanicas, they noticed a police patrol car parked on the road. Amion stepped down from the patrol car to request whoever is the driver of the parked car to give way. Divino saw the accused talking with the person whom he later came to know as PO3 Vaflor. He testified that he saw PO3 Vaflor making a motion to draw his gun and it was at that time when the accused shot him.

The trial court concluded that the testimonies of Sanicas and Dejas positively show that the accused suddenly,

deliberately and without warning, shot to death PO3 Victor Vaflor in the afternoon of January 24, 1994 at Brgy. Mansilingan, Bacolod City. The firearm used in the killing was an armalite rifle with Serial No. RP-186739 which was issued to him in his official capacity as a member of the Bacolod City Police Office. The trial court found that the motive for the killing is revenge as the victim is one of those charged with murder for the death of Amion's uncle many years ago. The killing was attended by treachery as the accused was already waiting by the gate when victim emerged and was fired upon with an M16 armalite rifle and was thus absolutely unprepared for the attack and had no chance to defend himself or to escape.

We find no cogent justification to disturb the findings of the trial court.

We do not agree with accused-appellant that the testimonies of Dejas and Sanicas were highly improbable. Accused-Appellant claims that based on their testimonies he could not have shot Vaflor without harming Sanicas and Dejas; that since Dejas had come out of the gate first, he should have retreated and closed the gate when he saw Amion since he knew of the feud existing between him and Vaflor; and that the nature of the gunshot wounds sustained by Vaflor do not support the testimony of Sanicas that he shot Vaflor from a distance of one (1) meter.

The objections refer to minor matters and do not detract from the positive identification of accused-appellant as the assailant. Moreover, the two (2) witnesses corroborated each other on the essential points regarding the shooting incident. The first shot hit Vaflor as the latter was about to open the door of the Escalante police car. We agree with appellee that both Dejas and Sanicas were outside the line of fire during the shooting and could not have been hit unless directly shot at. Moreover, Dejas saw Amion when he was well past the gate and was already in front of the car; hence it is pointless to argue that Dejas should have closed the gate when he saw Amion. As regards the "alleged established rules in ballistics as to the effective fire power of an armalite", there is no showing to support the bare allegation that judging from Vaflor's bullet wounds, he could not have been fired upon at a distance of about one (1) meter.

What is material is that the two (2) prosecution witnesses positively declared that accused-appellant without warning fired upon Vaflor with an M16 armalite. Sanicas admitted that the incident happened so quickly and that there could have been other details that escaped his observation but his testimony, as capsulized by the trial court is as follows:

"What he can distinctly recall is that after he stepped out of the steel gate following PO3 Vaflor, the accused, who was only about a meter away from PO3 Vaflor, fired a shot with his armalite rifle and PO3 Vaflor fell. CI Sanicas tried to disarm the accused and in so doing, he must have stepped up between the accused and his victim for what the accused did was to back away and circle the Escalante patrol car with CI Sanicas following him. Upon reaching the fallen Vaflor, the accused fired shots at him again. Again, CI Sanicas tried to disarm the accused but again, the accused refused to give up his firearm and again, he backed away with CI Sanicas following him. The accused again circled the Escalante patrol car and again approached his fallen victim. CI Sanicas is not certain whether the accused shot Vaflor for the third time"[7].

Sanicas himself was caught by surprise as it happened "so fast" as he "never thought that the thing would happen(ed) like that in front of me with two (2) people who are also members of the police force"[8]. Like Sanicas, Dejas, who is a friend and neighbor of accused-appellant, had no reason to testify against the accused-appellant.

Accused-appellant further claims that in discounting the testimonies of CVO Divino and SPO4 Alabia, the defense of the accused was greatly affected and "in effect barred the truth from being unearthed". The submission is not tenable. Divino's attempt to corroborate the version of accused-appellant that Vaflor made a motion to draw his gun and it was at this point that accused-appellant fired his rifle was rejected by the court as "rehearsed and

untruthful", in contrast to the testimonies of Sanicas and Dejoras which the court described as credible and were given in a "sincere, honest and straightforward manner." Needless to state the doctrinal rule is that the question of assessing the credibility of witnesses is primarily addressed to the trial court, whose findings are generally respected on appeal.

The accused-appellant pleads that he acted in self-defense thus:

"As borne out by the records, the accused NEVER intended to shoot PO3 VAFLO. In fact, when he saw him coming out of the gate, he greeted him, "DONG ARI KA" (Hi, you're here?). However, PO3 VAFLO retorted by saying: "TI ANO" (So what!). Then, PO3 VAFLO made a gesture as if to pull out his gun (as in fact the Prosecution has admitted that PO3 VAFLO was then carrying his service firearm). And this left the accused-appellant without any alternative but to shoot PO3 VAFLO with his only firearm, the armalite rifle. If he did not shoot PO3 VAFLO, the latter should have shot him (accused-appellant). The act of VAFLO in trying to pull out his service firearm is definitely an act of UNLAWFUL AGGRESSION. (PP. VS. ZAMBARRANO, CA 54 O.G. 8455; PP. VS. ALVAREZ, JR. 8 ACR 690). With no other weapon available to him, except his armalite rifle, accused-appellant's using the said armalite in order to defend was reasonable." [9]

Where the offender admits authorship of the killing, the onus probandi is shifted to him to prove the elements of self-defense, namely that 1) there was unlawful aggression by the victim; 2) that the means employed to prevent or repel such aggression was reasonable; and 3) that there was lack of sufficient provocation on the part of the person defending himself. As above-stated, the first element was not proven. Unlawful aggression presupposes an actual, sudden and expected attack and this was not proven. Moreover, Vaflo suffered multiple gunshot wounds after falling down from the first gunshot. The accused circled the Escalante patrol car, with Sanicas following him in order to disarm him, and upon reaching the fallen Vaflo, fired shots at him again. If he shot the victim merely to defend himself, there would have been no cause for accused-appellant to shoot him again [10].

With respect to the attendant circumstances, we agree with the Solicitor General that the use of a motor vehicle cannot be considered as an aggravating circumstance, as the police vehicle used to reach the Sanicas residence was not used directly or indirectly to facilitate the criminal act [11]. Although the accused-appellant used a patrol car to commute from Escalante to the Sanicas residence, there is no showing that the use of that vehicle facilitated the act of shooting itself.

Neither may the aggravating circumstance of aid of armed men be appreciated in this case. The trial court found that during the shooting, an armed companion was on board the patrol car pointing his rifle in the direction of Dejoras. In the first place, this aggravating circumstance contemplates more than one armed man, as the use of the plural form easily suggests. In the second place, the requisites of this aggravating circumstance are: 1) that armed men or persons took part in the commission of the crime, directly or indirectly, and 2) that the accused availed himself of their aid or relied upon them when the crime was committed. Neither circumstance was proven present; it is clear from the evidence that the accused-appellant carried out the killing all by himself and did not rely on his companion for assistance.

We also do not agree that the fact that accused-appellant used his service firearm in shooting Vaflo should be considered as an aggravating circumstance as he took advantage of his public position. [12] There is authority to the effect that for public position to be appreciated as an aggravating circumstance, the public official must use his influence, prestige and ascendancy which his office gives him in realizing his purpose:

"If the accused could have perpetrated the crime without occupying his position, then there is no abuse of public position. In one case where the accused was a sergeant of the Philippine Army, this Court held that the mere fact that he was in fatigue uniform and had an army rifle at the time is not sufficient to establish that he misused his public position. In another case where the accused, a Constabulary soldier used a Garand rifle in

the provincial jail armory in killing a policeman, the aggravating circumstance of taking advantage of public position was not appreciated because accused could have secured a rifle from other sources. And in the murder by a public officer, it was ruled that firearms, however and whenever obtained, are not an ingredient of murder or homicide. The crime could have been committed by defendants in the same or like manner and with the same ease if they had been private individuals and fired with unlicensed weapons. In the case at bar, although the victim was killed with appellant's armalite rifle which was issued to him, there was nothing to show that appellant took advantage of his position. In the absence of proof that advantage was taken by appellant, the aggravating circumstance of abuse of position could not be properly appreciated against him." [13]

Appellee assails the court's conclusion that the circumstance of voluntary surrender is present contending that there is no showing that appellant surrendered in a spontaneous manner, as shown by the testimony of Sanicas [14] that appellant refused to surrender his firearm. Accused-appellant in his Reply Brief asserts that it was he who lifted the body of Vaflo and loaded it on his vehicle and brought him to the Bacolod Sanitarium and Hospital, without instruction from CI Sanicas. The fact that accused-appellant yielded his weapon to Sanicas at the time of the incident, albeit with some persuasion from the latter, should be considered in his favor. Moreover, the records show that the warrant of arrest was dated March 3, 1994 and received by the Station Commander, Bacolod PNP Station and by the Provincial Director, PNP Provincial Commander, Camp Alfredo, on March 14, 1994 and March 12, 1994 respectively, whereas the Commitment Order signed by the Executive Judge was dated March 7, 1994 [15]. It would appear therefore that the accused-appellant was already in police custody before the warrant of arrest was served. The warrant of arrest itself carries a marginal note "voluntarily surrendered March 5, 1994". We find no cogent justification to rule that the trial court erred in giving the accused the benefit of the mitigating circumstance of voluntary surrender.

In view of the absence of aggravating circumstances and the presence of one mitigating circumstance, the penalty imposed by the trial court should be modified.

The penalty for murder Under Article 248 is reclusion perpetua to death [16] Pursuant to Article 63, in case of two indivisible penalties, when the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. Hence the imposable penalty is reclusion perpetua.

The civil indemnity for death is P50,000.00. With respect to the loss of earning capacity, the formula for computing the same is laid down in *People vs. Silvestre* [17]:

Net Earning Capacity = life expectancy x Gross Annual Income - living expense

The deceased Vaflo was a policeman earning P3,800.00 a month, or P45,600.00/annum, and was 43 years old at the time of his death, thus:

Net Earning Capacity

(x)

=

Life expectancy

[2/3(80-age at death)]

x

Gross Annual Income (GAI)

-

living expenses (50% of GAI)

X

=

2(80-43) 3

x

45,600.00

-

22,800.00

x

=

24.666666

x

22,800.00

Net Earning Capacity

=

P 562,399.98

The indemnity for loss of earning capacity should be P562,399.98.

WHEREFORE, the judgment finding the accused-appellant Baltazar Amion y Dugaduga guilty beyond reasonable doubt of murder is hereby **AFFIRMED** with the **MODIFICATION** that the penalty imposed is reduced to reclusion perpetua and the damages for loss of earning capacity is increased to P562,399.98. The awards of P50,000.00 as death indemnity and P10,000.00 as moral damages are affirmed.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Original Records, pp. 1-2.

[2] Per Judge Roberto S. Chiongson.

[3] Rollo, p. 69.

[4] Original Records, pp. 498-499.

[5] Original Records, pp. 499-501.

[6] Ibid., pp. 503-504.

[7] see TSN, March 28, 1996, pp. 14-27.

[8] at p. 22.

[9] Appellant's Brief, pp. 10-11; Rollo, pp. 74-75.

[10] *People vs. Ringor, Jr.* 320 SCRA 341.

[11] *People vs. Herbias*, 265 SCRA 571.

[12] *People vs. Gapasin*, 231 SCRA 728.

[13] *People vs. Joyno*, 304 SCRA 655.

[14] TSN, March 28, 1996; pp. 25-28.

[15] p. 17 at seq.

[16] Sec. 6, P. D. 7659.

[17] 307 SCRA 68.

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