

SOLOMON ALVAREZ, PETITIONER, VS. COURT OF APPEALS, RESPONDENT.

G.R. No. 141801. June 25, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Solomon Alvarez (petitioner) filed this petition for review on certiorari seeking to reverse and set aside the Decision, dated October 26, 1999, of the Court of Appeals (CA) which affirmed with modification his conviction for the crime of Homicide. Petitioner likewise seeks the reversal of the appellate court's Resolution, dated January 27, 2000, denying his motion for reconsideration.

For the death of Aurelio Manalo, Jr., two separate (2) criminal Informations were filed against petitioner, namely: Illegal Possession of Firearms and Homicide. The Information charging petitioner with homicide reads:

That on or about the 24[th] day of November, 1989, in the municipality of Pasig, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above named accused, armed with a gun, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Aurelio Manalo, Jr., thereby inflicting upon him gunshot wounds on the trunk which directly caused his death.

Contrary to law.[1]

The Information charging him with illegal possession of firearms reads:

That on or about the 24[th] of November, 1989 in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any lawful or justifiable reason, did then and there willfully, unlawfully and feloniously have in his possession direct custody and control a .38 Smith and Wesson caliber revolver with Serial no. 96729 without first securing the necessary license to possess or permit to carry the same from a competent government authority.

Contrary to law.[2]

Initially, the two cases were filed separately. The case for illegal possession was filed with the Regional Trial Court (RTC), Branch 156 of Pasig while the case for homicide was filed with the RTC, Branch 67 also of Pasig. Petitioner pleaded "not guilty" to both charges. Some time during the separate trial of the two cases, the trial court hearing the case for illegal possession of firearms ordered its consolidation with the homicide case. However, the case for illegal possession of firearms was dismissed after it was established during trial that petitioner was a confidential agent of the National Bureau of Investigation and, as such, he was duly authorized to possess and carry the firearm, subject of the case, on the night of the incident.

After due trial, the RTC found petitioner guilty of homicide. The dispositive portion of the trial court's assailed decision reads:

WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Homicide, defined and penalized under Art. 249 of the Revised Penal Code, and applying the Indeterminate Sentence

Law, hereby sentences him to suffer imprisonment of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TWELVE (12) YEARS of prision mayor also as maximum, and other accessories of the law, and to indemnify the heirs of Aurelio Manalo, Jr. the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

The caliber 138 (sic) revolver with serial No. 967029 is hereby confiscated in favor of the government, and the Branch Clerk of Court is hereby ordered to immediately turn over the said gun to the Firearm and Explosive Unit.

SO ORDERED.[3]

On appeal, the Court of Appeals (CA) affirmed petitioner's conviction but modified the duration of the penalty imposed on him to six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

From the evidence on record, the CA culled the following facts:

The prosecution presented Aurelio Manalo, Sr., Ramil Capongcol, Romeo Montada, P/Cpl. Benigno Bugnot and Dr. Dario Gajardo as its witnesses.

First to testify was the father of the victim, Aurelio Manalo, Sr. He testified that in the morning of November 24, 1989, witness, was awakened by a commotion inside the "For the Road Pubhouse" located at the other side of the street. When he was about to go back to sleep, a certain Annie Sanchez informed him that "Baby Ama" (witness' son Aurelio Manalo, Jr.) was shot. Witness then went to the "For the Road Pubhouse" where he saw his son Aurelio Manalo, Jr. lying face down on a bench. He then proceeded to the police station to report the matter (pp. 2-9, tsn, July 10, 1990).

Witness also testified that he spent P12,000.00 for funeral services and P15,000.00 for the burial of his son as well as an additional P5,000.00 for other expenses incurred during the funeral and interment. Witness also added that as a result of his son's death, lack of sleep and loneliness caused him to stop engaging in his business from the time his son was killed up to the present (p. 10, tsn, July 10, 1990).

The next witness for the prosecution was Romeo Montada. He testified that on November 24, 1989 at around 1:00 o'clock in the morning, he was at the "For the Road Pubhouse" together with Solomon Alvarez (accused-appellant herein) and his compadre Antonio Reyes. They ordered beer but did not drink the same until a certain Pabby Austria arrived at around 1:30 a.m. and joined their group. Said witness however, testified that there was no unusual incident that happened at the said beerhouse on or about that time (pp. 2-5, August 14, 1990).

The third witness, Annie Sanchez, stated that on November 24, 1989 at around 1:00 a.m., she was sitting outside the "For the Road Pubhouse" together with Dotty and Solomon Alvarez and that she (Annie Sanchez) knew the victim "Baby Ama" as the latter's house is just opposite the pubhouse where she works. She then testified that she and Dotty went out to buy bread and that when they came back at around 3:30 in the morning (as they were alighting from the tricycle), they heard a shot. Witness then rushed into the pubhouse and saw Solomon Alvarez, Pabby, Domeng and another person coming out of the pubhouse. She then saw the tables were disarranged and a man lying on a bench. Witness went out of the pubhouse to look for Domeng, Pabby, Solomon and one person whom she does not know, to tell them to bring home their companion whom she thought was only drunk. She (witness) then asked for help from a certain Jun Manalo but the latter refused to help. When she went back to the pubhouse, the man lying on the bench was still inside the pubhouse (pp. 11-15, tsn, August 14, 1990).

Annie Sanchez also testified that after she went back to the Pubhouse from Jun Manalo's place, she went to look for a certain Omeng to ask for help. It was only then that Omeng told the witness that the man lying face

down on the bench was Baby Ama who was already dead. (pp. 12-13, tsn, October 22, 1990).

The fourth witness for the prosecution was Ramil Capungcol who knew the victim prior to the incident only as Baby Ama. Said witness testified that on November 24, 1989 at around 2:00 o'clock in the morning, he was inside the "For the Road Pubhouse" in San Joaquin, Pasig, cooking pulutan when the victim (Aurelio Manalo, Jr. alias "Baby Ama") entered the pubhouse and held the neck of one Solomon Alvarez. The latter suddenly stood up causing the table to turn upside down. Then victim, Aurelio Manalo, Jr. and accused Solomon Alvarez, together with the other persons inside the pubhouse whom witness only knew as Omeng, and Pabie tumbled and grappled. Witness then ran away. When he reached the kitchen, he heard three gunshots (pp. 1-7, tsn, April 1, 1991).

Ramil Capungcol also recalls having been investigated by the police as well as having executed a Malayang Salaysay about the incident (p. 7, tsn, April 2, 1991).

For his part, Colonel Dario Gajardo, who is a physician and connected with the Narcotics Crime Laboratory stated that he conducted the autopsy on the cadaver of Aurelio Manalo, Jr. and found that the victim sustained three gunshot wounds causing the latter's death (pp. 5-15, tsn, July 3, 1992).

As for Policeman Remegio Bugnot of the Pasig Police Station, he recalled that during his tour of duty on November 24, 1989, the victim's father Aurelio Manalo, Sr. appeared personally at the police station reporting a shooting incident resulting in the death of his son; he (witness) was then dispatched to the scene of the crime together with his co-investigator and a photographer; he recovered the firearm as well as the bullets depicted in Exhibit "B-2" as the same was voluntarily surrendered by the accused Solomon Alvarez himself; he prepared an investigation report of the incident but was not able to retain a copy thereof and; he then turned over the firearm and bullets surrendered by the accused to the evidence custodian (pp. 2-8, tsn, October 2, 1992).

Policeman Romeo Bugnot also stated that the suspect voluntarily admitted having hit the victim but claimed self-defense (p. 8, tsn, October 2, 1992).[4]

Petitioner now comes to the Court alleging that the CA erred in affirming his conviction. Essentially, petitioner maintains that his guilt was not proven beyond reasonable doubt as there was no direct evidence to show that he fired the gunshot or shots that killed Aurelio Manalo, Jr.

The petition is without merit.

It is well established in our criminal jurisprudence that direct evidence of the commission of a crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt.[5] Circumstantial evidence may alone be sufficient to prove the elements of the crime so long as the following requisites concur:

- there is more than one circumstance;
- the facts from which the inferences are derived are proven; and
- the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.[6]

The circumstances themselves, or a combination thereof, should point to overt acts of the accused that would logically point to the conclusion, and no other, that the accused is guilty of the crime charged and at the same time inconsistent with the hypothesis that he is innocent.[7] Resort to circumstantial evidence is essential when to insist on direct testimony would result in setting felons free.[8]

In this case, both the trial court and the CA established that there are sufficient circumstantial evidence to support petitioner's conviction. These are:

- Witness Ramon Capungcol testified that he saw the victim Aurelio Manalo, Jr. and petitioner, as well as his two

companions, in a scuffle inside the For the Road pubhouse on the night of the incident. The victim shouted "Awatin ninyo, may baril iyan;"

- Capungcol fled to the kitchen and from there he heard three gunshots;
- Annie Sanchez testified that at about the same time, she had just alighted from a tricycle when she heard a gunshot. She then saw petitioner and three other persons leave the pubhouse. When she entered the pubhouse, she saw the victim lying on the floor;
- In his "Malayang Salaysay," which was identified in open court and offered in evidence, Capungcol pointed to petitioner as the one who shot the victim;
- Romeo Montada confirmed the presence of petitioner at the scene of the crime at the time of the incident;
- Dr. Dario Gajardo, the medico-legal expert, testified that the body of the victim bore three gunshot wounds and that the slug recovered therefrom was that of a .38 caliber revolver;
- It was established by Capungcol that petitioner had a gun tucked to his waistband at the time of the incident;
- It was, likewise established in the illegal possession of firearms case that petitioner lawfully possessed the .38 caliber revolver on or about the time of the killing of Aurelio Manalo, Jr.;
- Petitioner's possession of the subject firearm was further confirmed by P/Cpl. Bugnot when he testified that petitioner surrendered to him a .38 caliber revolver at the scene of the crime;
- Petitioner was positively identified by Montada and P/Cpl. Bugnot as the person answering to the name Solomon Alvarez; and
- P/Cpl. Bugnot testified that petitioner admitted to killing the victim but claimed self-defense.[9]

Petitioner, however, impugns the testimony of Capungcol contending that he failed to positively identify petitioner in open court as the one who shot the victim. Nonetheless, Capungcol, in his Malayang Salaysay, did categorically implicate petitioner for Manalo's death. This affidavit was identified by Capungcol and was marked and offered in evidence before the trial court without objection by the defense. Further, the incriminating statements therein were corroborated by the testimonies of the other prosecution witnesses.

As summarized by the CA, the following evidence on record sufficiently prove petitioner's liability:

- accused-appellant was inside the "For the Road Pubhouse" on or about the time the homicide took place in the morning of November 29, 1989;
- accused-appellant was the only person known to be carrying a .38 caliber revolver at that time and place;
- there was a commotion which ensued in the said pubhouse when the victim, upon entering the said establishment, suddenly grabbed hold of accused-appellant's neck, provoking the latter to stand up and grapple with the former, overturning tables and benches;
- the victim "Baby Ama", shouted, "awatin ninyo may baril yan". (p. 177, Record);
- in the midst of the commotion, three (3) gunshots were heard;
- accused-appellant was seen leaving the pubhouse immediately after the incident;
- the victim's body bore three (3) gunshot wounds, one of which was certainly caused by a .38 caliber slug;
- accused-appellant admitted to P/Cpl. Bugnot at the crime scene, about one (1) hour after the incident, having

shot the victim.[10]

The foregoing circumstances, taken together, lead to no other conclusion than that petitioner is liable for the killing of Aurelio Manalo, Jr. As correctly opined by the Solicitor General, "these circumstances show that petitioner had the motive, opportunity and means of killing the victim at the place and time in question." [11]

Petitioner relies heavily on his argument that circumstantial evidence number 8, i.e., P/Cpl. Bugnot's testimony that petitioner admitted to killing the victim in self-defense, is inadmissible in evidence the same having been made by petitioner without the assistance of counsel. As found by the CA, it was not shown that petitioner was under custodial investigation at the time he made his verbal admission, thus, the rights of the accused guaranteed by the Constitution did not come into operation. As previously held by this Court, "the constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime." [12] Granting arguendo that petitioner's verbal admission is inadmissible, the conviction of petitioner can still stand on the basis of the circumstances earlier mentioned. Taken in their entirety, these circumstances constitute an unbroken chain, consistent with each other and the theory that petitioner authored the crime charged.

Finally, petitioner assails the prosecution for its failure to conduct ballistics and paraffin tests. He presumes that no such tests were made by the prosecution in order to "deliberately suppress" the results thereof, which might exculpate him from the offense. This contention is untenable. The CA aptly ruled that the choice of what evidence to present, or who should testify as a witness is within the discretionary power of the prosecutor and definitely not for the courts to dictate. In any case, the presentation of the weapon (or the slugs, as in this case) and ballistic examination are not prerequisites for conviction.[13] Further, paraffin tests have never been considered to be foolproof.[14] As already discussed, there are ample evidence on record to warrant petitioner's conviction for the crime of homicide.

In fine, the Court finds no cogent reason to deviate from the settled rule that factual findings of the trial court are binding on the Supreme Court when supported by substantial evidence on record and carry more weight when affirmed by the appellate court, as in this case.[15]

WHEREFORE, the petition is DENIED for lack of merit. The Decision, dated October 26, 1999, of the Court of Appeals in CA-G.R. CR No. 19564 and its Resolution, dated January 27, 2000, are AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J.,(Chairman), Puno, Pardo, and Ynarez-Santiago, JJ., concur.

[1] CA Decision, pp. 2-3; Rollo, pp. 26-27.

[2] Id., at 3.; Rollo, p. 27.

[3] Id., at 1-2; Rollo, pp. 25-26.

[4] Id. at 4-6; Rollo, pp. 28-30.

[5] *People vs. Espina*, 326 SCRA 753, 762 (2000); *People vs. Lopez*, 313 SCRA 114 (1999); *People vs. Danao*, 253 SCRA 146 (1996).

[6] Section 4, Rule 133, Revised Rules on Evidence.

[7] *People vs. Salonga et al.*, G.R. No. 128647, 31 March 2000, p. 15; *People vs. De.Guia*, 280 SCRA 141 (1997).

[8] People vs. Salas, 329 SCRA 319, 328 (2000).

[9] See Note 1, at 11-12; Rollo, pp. 34-35.

[10] Id., at 14-15; Rollo, pp. 38-39.

[11] Comment, p. 14; Rollo, p. 84.

[12] People vs. Andan, 269 SCRA 95 (1997); Aballe vs. People, 183 SCRA 196 (1990); People vs. Dy, 158 SCRA 111 (1988).

[13] People vs. Dando, 325 SCRA 406, 426 (2000).

[14] People vs. Dianos, 297 SCRA 191, 207 (1998).

[15] Galang vs. Court.of.Appeals, 324 SCRA 139, 143 (2000).

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