

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PAQUITO ROMERO ALIAS “ADA,” APPELLANT.

G.R. No. 144156. March 20, 2003

Ponente: CORONA, J.

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CORONA, J.:

Before us on appeal is the decision[1] of the Regional Trial Court of Romblon, Branch 81, in Criminal Case No. 2158, finding herein appellant, Paquito Romero, alias “Ada,” guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Augusto Ruba, in the amount of P50,000.

On May 25, 1999, the appellant, Paquito Romero alias “Ada,” was charged with the crime of murder of Augusto Ruba in an Information which reads:

UNDERSIGNED accuses PAQUITO ROMERO, a.k.a. “Ada,” of the heinous crime of MURDER as penalized under Republic Act 7659, committed as follows:

That on or about the 18[th] day of March, 1999, at around 8:00 o’clock in the evening, in sitio Libo-o, barangay Taclobo, municipality of San Fernando, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, by means of treachery and with evident premeditation, willfully, unlawfully and feloniously attack, assault and strike with a blunt instrument one AUGUSTO RUBA, inflicting upon the latter mortal injury on his head which caused his death.

CONTRARY TO LAW.[2]

When arraigned on July 27, 1999, appellant Romero, assisted by counsel, pleaded “not guilty” to the charge of murder. However, on August 26, 1999, the appellant proposed to change his plea of not guilty to the charge of murder to a plea of guilty to the lesser offense of homicide. After both parties agreed on the conditions for the new plea, the trial court issued an order, the pertinent portion of which reads as follows:

xxx xxx xx

When this case was called for initial reception of evidence for the prosecution, the accused Paquito Romero, a.k.a. “Ada”, assisted by PDO Atty. Cesar M. Madrona, withdrew his earlier plea of not guilty to the charge of murder and when the accused was re-arraigned, he pleaded guilty to the lesser offense of homicide which the prosecution accepted without objection with the following conditions: (1) that there will be no modifying circumstances; (2) that the father of the deceased shall be reimbursed for his actual expenses in the total sum of P30,000.00 aside from his liability for P50,000.00 as civil indemnity for the death of his victim; and (3) that the Court shall take into consideration the penalty of prision mayor or six (6) years and one (1) day to twelve (12) years as recommended by trial prosecutor Joel A. Sy.

WHEREFORE, in view of the foregoing, this case is deemed submitted for decision.

Before the trial court rendered a decision, the prosecution, on August 30, 1999, moved for the re-opening of the case on the ground that the appellant violated one of the above conditions when he refused to pay the amount of P30,000 to the father of the victim. Instead, the appellant proposed to pay the lesser amount of P20,000, conditioned on his being set free upon payment thereof. The trial court granted the motion of the prosecution and ordered the commencement of trial.[3]

The prosecution presented its first witness, Rodolfo Moreno. According to Moreno, at around past 5:00 p.m. of March 18, 1999, he was drinking tuba with the victim, Augusto Ruba, in his home in Barangay Taclobo, San Fernando, Romblon. At about 7:00 p.m., they went to the house of the brother of the appellant, Edresito “Kito” Romero, where the three of them drank several bottles of beer and gin. At this point, the appellant arrived and drank two bottles of beer before he decided to leave. Not long after, Moreno and the victim also left and proceeded to the trail leading to the national road.[4]

At about 8:00 p.m., while they were walking along the national road, Moreno and the victim saw herein appellant Romero in a squatting position. His left hand was at his back while his right hand was on his side with his fist slightly clenched. In that position, appellant looked as if he was preparing to lunge at the victim. Moreno clearly saw appellant due to the illumination coming from the fluorescent light from the post which was only two meters from the appellant.[5] Smiling, the victim told Moreno to walk behind him.[6] As the victim passed, the appellant suddenly stood up and struck him at the back of the head with an air pump.[7] After being hit, the victim fell frontally to the ground (“sumubsob”). Moreno ran to his house and hid there. At about 5:00 a.m. of March 19, 1999, he went to the house of Climaco Ruba, the father of the victim, and related what happened to his son.[8]

SPO1 Jesus Protacio Meneses testified that he was the officer assigned to investigate the crime. He went to the hospital on March 25, 1999 and conferred with the victim’s attending physician, Dr. Ramon Villanueva, who informed him that the victim’s condition was critical. SPO1 Meneses then checked on the victim who was still conscious. Dr. Villanueva asked Romero to extend his tongue to determine if he could comprehend instructions. The victim responded by extending his tongue three times. Meneses asked his name in the presence of Corazon Junsay (the victim’s sister) and Dr. Villanueva. The victim answered although he was short of breath. Meneses then asked for the name of the person who hit him and the victim replied that it was Paquito “Ada” Romero.

SPO1 Meneses reduced the questions and answers into writing and had the document[9] thumbmarked by the victim and signed by him, with Junsay and Dr. Villanueva as witnesses. He noticed that the victim was already in serious condition at that time and his relatives told Meneses that he was dying.[10]

Corazon Junsay testified that they went to the scene of the crime and found her brother lying on the ground. They brought him to the district hospital of Cajidiocan where she asked the name of the person who struck him. She initially mentioned the names “Rodolfo Moreno” and “Edresito Romero” but the victim merely stared at her. When she mentioned the name “Ada,” her brother reacted with clenched fists. She mentioned the names of Edresito and Paquito “Ada” Romero because, five years before that, they accused her brother, the victim herein, of attempting to sexually assault the wife of appellant Paquito Romero.[11]

Junsay further testified that the victim was married and had a child. However, due to his wife’s mental sickness, Junsay attended to the victim after the incident and took care of the funeral and burial expenses after he died. Junsay confirmed that she was present when the ante-mortem statement of the victim was taken and identified her signature as a witness.[12]

Dr. Villanueva testified on the nature of the injury of the victim and the cause of his death. Affirming his findings in the medico-legal certificate,[13] Dr. Villanueva stated that the fatal injury on the occipital portion of the victim’s head could have been caused by a hard and blunt object, possibly an air pump. He confirmed his

presence when SPO1 Meneses took the victim's ante-mortem statement.[14]

SPO3 Giovanni Rico and Climaco Ruba also testified on the circumstances after the victim died.

On March 16, 2000, appellant filed a motion to dismiss the case on the ground of double jeopardy. This was, however, denied by the trial court in an Order dated March 20, 2000, thus:

O R D E R

Acting on the motion to dismiss, dated March 16, 2000, and on the oral arguments by trial prosecutor Joel A. Sy, the said motion is utterly without merit. Section 7, Rule 117 of the Revised Rules of Court and the elements cited by the movant which must be present in the first case would point to the utter lack of merit of this motion to dismiss. Under letter (d), the accused must be convicted or acquitted or the case was dismissed without his express consent which element is lacking in this case. To the surprise of the Court, however, the accused, through counsel, would claim that the order, dated August 26, 1999 (page 25 of record), shows his conviction. That this is not a conviction of the accused it too obvious to elaborate.

WHEREFORE, the motion to dismiss, dated March 16, 2000, is denied for lack of merit. Let the continuation of the reception of evidence for the prosecution be heard as previously scheduled tomorrow at 8:30 o' clock in the morning to give time for the accused to prepare for the continuation of trial. The accused, public prosecutor and counsel for the accused are notified in open Court.

SO ORDERED. [15]

Appellant interposed the defense of alibi. He claimed that, on March 18, 1999, at around 7:00 p.m., he was in his house. Subsequently, he went to the house of his brother Edresito "Kito" Romero to buy cigarettes, two bottles of coke and two tablets of medicine for his sick children. In Kito's house, he met Rodolfo Moreno, the victim and his brother who were drinking gin and beer. Victim Augusto Ruba drank gin while Moreno drank beer. He stayed there for 15 minutes and consumed two bottles of beer after which he went home to attend to his sick children. He did not leave his residence until the next morning.[16]

On cross examination, he testified that his house was only eight meters from that of his brother. Hence, even before he left for his brother's house that evening, he already knew that the victim and Moreno were there.[17]

Porferio Morteria, Barangay Captain of Barangay Taclobo, San Fernando, Romblon, testified that it was Rodolfo Moreno, and not the appellant, who killed the victim. He was at the dancing hall with the chief of police when they were told that the victim was lying prostrate on the national road. When he arrived at the crime scene, he saw the unconscious victim with his legs stretched apart in the middle of the national road. The victim was 100 meters away from the nearest lighted post.[18] Climaco Ruba and Corazon Junsay were crying aloud. They asked that Rodolfo Moreno be arrested inasmuch as, being the last person with the victim, Moreno was probably the one who struck him. Consequently, defense witness Morteria, together with the chief of police, including three policemen and a barangay tanod, went to the house of Rodolfo Moreno. However, Moreno's father told them that he already transferred residence. Through the help of Corazon Junsay, they reached Moreno's house and he agreed to be investigated at the police station[19]

On March 22, 1999, at about 3:00 p.m., Moreno told Morteria that the family of the victim would no longer pursue the case against him inasmuch as they could not get anything from him. Instead, they instructed him on what to say and to point to the appellant as the person who struck the victim. The heirs of the victim wanted to collect from the appellant four carabaos and P30,000. They offered to share with Moreno the amount that could be collected if he testified against the appellant.[20]

Jimmy Vicente, a barangay tanod, corroborated the testimony of Morteria on material points.[21]

On June 8, 2001, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, this Court finds accused PAQUITO ROMERO, aka “Ada”, GUILTY beyond reasonable doubt of the crime of Murder under the Information, dated May 25, 1999, and hereby sentences him to reclusion perpetua, to indemnify the heirs of the victim, Augusto Ruba, in the amount of P50,000.00 and to pay the costs.

The preventive imprisonment which the accused had undergone shall be credited in his favor to its full extent in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.[22]

In convicting the appellant of murder, the trial court relied on the ante-mortem statements of the victim pointing to him as the perpetrator of the crime. It also gave credence to the narration of Moreno who positively identified the appellant as the person who hit the victim at the back of the head. Relying on Moreno’s testimony, the trial court held that treachery attended the commission of the crime.

Hence, this appeal based on the following assignments of error:

I

THE TRIAL COURT GRAVELY ERRED IN GRANTING THE PROSECUTION’S MOTION TO RE-OPEN THE CASE AND IN CONVICTING THE ACCUSED APPELLANT FOR THE CRIME OF MURDER.

II

ASSUMING FOR THE SAKE OF ARGUMENTS (sic) THAT THE TRIAL COURT ORDER GRANTING THE PROSECUTION’S MOTION TO RE-OPEN THE CASE IS VALID, IT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[23]

Appellant insists that his right against double jeopardy was violated when the trial court granted the prosecution’s motion to re-open the case after it approved his plea to the lesser offense of homicide.

We disagree. The trial court was correct in holding that there was no double jeopardy in this case, considering that it was not terminated as a result of appellant’s acquittal, conviction or dismissal. The order approving the guilty plea to homicide, with conditions, was not a judgment of conviction. The dispositive portion of the said order which in part reads “WHEREFORE, in view of the foregoing, this case is deemed submitted for decision,” clearly shows that the trial court still had to render a decision on the criminal and civil liabilities of the appellant. The said order merely approved the agreement between the parties on the new plea to a lesser offense by the appellant and the conditions attached to it. The trial court neither sentenced the accused nor made any ruling on the civil indemnity in favor of the heirs of the victim.

That appellant killed the victim has definitely been established. The only issue to be resolved is the attendance of treachery in the commission of the crime.

We have always ruled that two conditions must concur to constitute treachery, namely: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (2) deliberate or conscious adoption by the culprit of the means of execution.[24] According to the defense, based on the evidence presented, the victim had an opportunity to defend himself because, prior to the attack, he was aware of the presence of the appellant with whom he had a previous misunderstanding. On the other hand, it is the Solicitor General’s position that the assault was treacherous as the victim had no inkling that the appellant would attack him from behind. According to the Solicitor General, the presence of the appellant by the roadside near a

lighted lamppost was not enough to warn the victim of any danger because he did not know that the appellant was armed. In fact, they were together drinking just an hour before the assault.

We agree with the appellant that no treachery attended the commission of the crime. Just prior to the assault, the victim and Moreno already saw the appellant in an intimidating posture. His left hand was at his back and his right fist was slightly clenched. Faced with that scenario, the possibility of danger against his person must have crossed the victim's mind. Instead of backing off, the victim just smiled, whispered to Moreno that he would go ahead and in fact continued walking. The victim clearly had the chance to turn back but he did not. He was undoubtedly forewarned and was fully aware of the possible attack against him but he ignored the same by continuing to walk past the appellant. Ordering Moreno to go behind him was a signal that he could handle any possible assault by the appellant. The victim had the opportunity to defend himself or at least avoid the appellant. Hence, no treachery attended the commission of the crime.

As there is reasonable doubt on the attendance of treachery, the crime committed is homicide only under Article 249[25] of the Revised Penal Code.

On the civil liability of the appellant, Corazon Junsay testified that she and her parents incurred the following expenses: (1) P11,100 when her brother died (2) P600 for the embalming (3) P7,000 for the coffin (4) P1,000 for the burial rites and (5) P4,575 for the funeral.[26] All in all, she said she and her parents spent P24,282 but she was unable to present any receipt to support her claim. We therefore cannot approve Junsay's list of hospital, funeral and burial expenses amounting to P24,282.

However, we affirm the trial court's award of P50,000 as civil indemnity ex delicto. We likewise award P50,000 as moral damages for the anguish suffered by the heirs of the victim as a result of his untimely demise.

WHEREFORE, the appealed decision of the trial court is hereby MODIFIED. Appellant Paquito Romero, alias "Ada," is hereby found GUILTY beyond reasonable doubt of the crime of HOMICIDE and sentenced to suffer the indeterminate penalty of 8 years of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal medium, as maximum, and to pay the heirs of the deceased victim, Augusto Ruba, the sum of P50,000 as civil indemnity ex delicto in addition to P50,000 as moral damages. Costs against the appellant.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez and Carpio-Morales, JJ., concur.

[1] Penned by Judge Placido Marquez; Rollo, pp. 19-25.

[2] Rollo, p. 9.

[3] TSN, September 23, 1999, pp. 2-7.

[4] Id., pp. 7-12.

[5] Id., pp. 12-14.

[6] Id., p. 25.

[7] Id., pp. 14-15.

[8] Id., pp. 15-18

[9] Exhibit "B".

[10] TSN, December 6, 1999, pp. 1-15.

[11] Id., pp. 24-25.

[12] Id., pp. 15-22.

[13] Exhibit “D”.

[14] TSN, January 17, 2000, pp. 5-10.

[15] Rollo, p. 87.

[16] TSN, March 22, 2000, pp. 2-6.

[17] Id., pp. 7-8.

[18] Id., p. 10.

[19] Id., 2-7.

[20] Id., p. 8.

[21] Id., pp. 27-33

[22] Rollo, p. 24.

[23] Rollo, p. 55.

[24] *People v. Dumayan*, G.R. No. 116280, May 21, 2001.

[25] Art. 249. Homicide. Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any other circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[26] TSN, December 6, 1999, pp. 26-27.

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