

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PFC FLORO MALEJANA, ACCUSED-APPELLANT.

G.R. NO. 145002. January 24, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari of the decision[1] of Branch 51 of the Regional Trial Court of Sorsogon in Criminal Case No. 91-2896 convicting appellant Floro Malejana of murder defined and penalized under Article 248 of the Revised Penal Code (RPC). After trial on the merits, the lower court found appellant guilty beyond reasonable doubt of the crime charged and sentenced him to suffer an indeterminate penalty of imprisonment ranging between fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal as minimum to twenty (20) years of reclusion temporal as maximum. The Court of Appeals affirmed the judgment but raised the penalty imposed to reclusion perpetua. Hence, this case is now before us on automatic review.

In the information[2] filed with the Regional Trial Court of Sorsogon, appellant was charged with murder as follows:

That on or about the 28[th] day of July, 1990, at barangay Marifosque, municipality of Pilar, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, armed with an armalite rifle, did then and there, willfully, unlawfully and feloniously attack, assault and sho[o]t one Janus (Bong) Roces, thereby inflicting upon the latter multiple mortal wounds which directly caused the death of said Janus (Bong) Roces, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.

Sorsogon, Sorsogon, March 27, 1991.

On arraignment, appellant pleaded not guilty to the charge. Pre-trial was thereafter held and terminated and trial proceeded accordingly.

The prosecution presented five witnesses: (1) Three eyewitnesses to the incident, namely, Andres Madrid, Antonio Sy and Samuel Andrade; (2) Domingo Luvidioro, the property custodian of the Philippine National Police (PNP) of Pilar, Sorsogon; and (3) Dr. Jose Luna, the rural health physician of Pilar, Sorsogon who performed the autopsy on and prepared the death certificate of Janus Roces (Roces), the victim.

Andres Madrid testified that he knew Roces because, apart from being one of the drivers of his (Madrid's) passenger jeepneys, Roces was his brother-in-law who lived with him in Marisfoque, Pilar, Sorsogon. On the other hand, Madrid stated that he was acquainted with appellant because the latter is a member of Pilar-PNP.

As to the events that transpired on July 28, 1990, Madrid narrated that around 7:15 p.m., while he was seated in front of his jeep parked at the side of the road at Marisfoque, Pilar, Sorsogon in the company of Roces, Sy, Andrade, Bernarda Sy, Jose Belmonte and Ernesto Francisco, he saw appellant at about 30 meters away heading

towards their direction. Upon reaching their group, appellant asked them where Roces was. When he noticed Roces who was sitting at a distance of 1 meter beside Madrid, appellant brandished an armalite rifle and fired a shot into the air. Then he pointed the barrel of the gun at Roces and fired five (5) times, hitting Roces thrice. After the victim fell to the ground, appellant left the scene of the incident and went to his house about 150 meters away. Madrid and his other companions tried to assist Roces but discovered that the latter was already dead, presumably from the gunshot wounds that were inflicted upon him by appellant.[3]

The statement of Madrid was corroborated by the testimonies of Antonio Sy[4] and Samuel Andrade[5] who both confirmed that, on the day in question, appellant approached their group looking for Roces and after locating him, fired his armalite rifle once in the air and then at least five times at the victim.[6]

The prosecution also presented Domingo Luvidioro who testified that, as property custodian of the PNP, he issued to appellant an M-16 armalite rifle with 260 rounds of live ammunition. When the firearm was returned to him on July 30, 1990, only 230 rounds of live ammunition were returned.[7]

On January 28, 1992, Dr. Jose Luna, the rural health physician of Pilar, Sorsogon, testified that after conducting an autopsy on the victim on July 29, 1990, he concluded that the immediate causes of death were shock and hemorrhage while the antecedent cause was the multiple gunshot wounds on the chest. He set forth the following findings in the Autopsy Report:[8]

External Findings:

HEENT- Hairs black, scalp has no contusions nor lacerations. Lower part of the face bloody. Bloody fluid coming out of both external nares. Black mustache.

Neck: Thyroid gland not enlarged. No strangulation marks.

Thorax: Anterior and portion aspect unremarkable. (On) the right aspect of the thorax (with) the RUE abducted there are three small bullet wound measuring 1X1 cm. arranged in a linear fashion at the midaxillary line immediately inferior of the axilla at 1 ½ inches apart. Bloody fluid oozing from the wounds. Left aspect of the thorax unremarkable.

Upper e(x)tr(e)miti(e)s: Right and left upper extr(e)miti(e)s unremarkable.

Abdomen and back: unremarkable.

Lower extr(e)mities: unremarkable.

Internal findings:

A T incision was made in the chest and the thoracic cavity was exposed. The heart appears (NORMAL) in size lying in the pericardial sac and containing a clear serous fluid. Both pleural cavity is half filled with bloody fluid. The lower lobes of the lungs are torn to pieces. The upper lobes appear (NORMAL). The right side of the rib cage at about the bullet wounds were fractured.

AUTOPSY FINDINGS (SUMMARY)

- Multiple bullet wounds chest
- Hemothorax
- Bilateral lower lobe lung injury or destruction.
- Fractures ribs

CAUSE OF DEATH:

IMMEDIATE CAUSE:

Shock and Hemorrhage

ANTECEDENT CAUSE:

Multiple G/S wound chest

UNDERLYING CAUSE:

Hemothorax due to trauma of both lungs; fractured ribs.

For its part, the defense presented as its sole witness ballistics expert Vicente R. De Vera[9] who was the chief of the Ballistics Division of the PNP Crime Laboratory Service. After examining the autopsy report, De Vera testified against the likelihood of an armalite being used to kill the victim and posited that the gunshot wounds were more consistent with those inflicted by bullets from a .45 caliber pistol. He explained that an armalite rifle would have cut off ½ of the body of the victim if fired at a distance of 1 ½ meters. He also opined that the velocity of the bullet of an armalite is 3,500 feet per second with an energy of 1,300 feet per pound. As a consequence, it would have destroyed or disturbed the internal organs of the person shot, in direct contrast to the victim in the case whose heart had not been disturbed.[10]

After the parties presented their respective evidence, the prosecution was allowed, over the objections of opposing counsel, to introduce rebuttal evidence culled from the records of the administrative case against appellant filed with the National Police Commission in connection with the same incident.[11] The following were marked as exhibits for the prosecution:

Exhibit F: Motion to Admit Counter-affidavit in Admin. Case No. 91-0466 against accused Floro Malejana in the National Police Commission.

Exhibit G-series: Counter-affidavit of accused.

Exhibit H series: Sworn Statement of Vicente Malle, witness of the accused.

Exhibit I series: Sworn Statement of Danilo Millares, witness of the accused.

Exhibit J series: AAD form No. 1 of Napolcom in the Administrative Case No. 91-0466.

Exhibit K series: decision of the Napolcom.[12]

On February 16, 1993, appellant filed a Petition for Certiorari[13] with prayers for the issuance of a writ of preliminary injunction and temporary restraining order, to nullify the trial court's Order dated November 3, 1992 which admitted into evidence Exhibits "F" to "J" as well as the Order dated December 22, 1992 denying his motion for reconsideration. The Court of Appeals subsequently dismissed the petition in a Decision dated 24 August 1993.[14] Aggrieved, appellant filed with this Court a Petition for Review on Certiorari.[15] This Court dismissed the petition for having been filed out of time.[16]

On June 1, 1995, the trial court rendered its decision as follows:

ACCORDINGLY, the Court finds accused Floro Malejana guilty beyond doubt of Murder defined and penalized under Article 248 Revised Penal Code, without mitigating or aggravating circumstances present, hereby sentences him to suffer an indeterminate penalty of imprisonment of fourteen (14) years and eight (8) months and one day of reclusion temporal as minimum to twenty (20) years of reclusion temporal as maximum and to indemnify the heirs of Janus Roces P50,000.00 for his death.[17]

On appeal, the decision of the trial court was upheld by the Court of Appeals with the following modification:

WHEREFORE, the ruling of the court a quo finding the accused-appellant guilty is AFFIRMED with the modification that the penalty to be imposed be RECLUSION PERPETUA. Pursuant to Section 13 of Rule 124 of the Rules on Criminal Procedure, as amended, let the entire record of this case is (sic) elevated to the Supreme Court for review.[18]

In his brief,[19] appellant raises the following errors:

- THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ERRED IN CONVICTING ACCUSED-APPELLANT FLORO MALEJANA OF MURDER AND IN NOT ACQUITTING HIM NOTWITHSTANDING THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.
- ASSUMING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT, THE TRIAL COURT ERRED IN APPRECIATING TREACHERY AS PURPOSELY EMPLOYED BY THE ACCUSED-APPELLANT TO COMMIT THE ALLEGED CRIME IN THE INFORMATION.

The issue in this case boils down to a question of credibility and relative weight of evidence adduced by the parties with respect to the surrounding circumstances of the killing. When the credibility of the witnesses is at issue, appellate courts will not disturb the findings of the trial court, the latter being in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial unless certain facts of substance and value had been overlooked which, if considered, might affect the results of the case.[20]The underlying reason for this principle has been explained as follows:

Having the opportunity to observe them, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court.

The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer of the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these on the basis of his observations arrive at an informed and reasoned verdict.[21]

After a thorough review of the evidence on record, this Court finds no reason to disturb the factual findings of the trial court.

The defense hinges its case upon the testimony of ballistics expert De Vera to impugn the conviction of appellant and particularly to support the assertion that the bullets that killed the victim came from a .45 caliber gun and not from an M-16 armalite rifle similar to the one issued to appellant as member of the PNP. Based on the foregoing, it is contended that the substance of De Vera's testimony sufficiently disproved and discredited the testimonies of Madrid, Sy and Andrade which were alleged to be mere fabrications.

The Court does not find such testimony compelling enough to overturn the trial court's decision and acquit appellant. As correctly pointed out by the court a quo, the proffered opinion of the expert witness does not conclusively rule out the possibility that an armalite rifle had been used, to wit:

Q:

The findings as it appears, there were 3 bullet wounds on the thorax of the victim that is 1 ½ inches apart. Based on the distance, could it not be possible that such bullet wounds could have been fired from an Armalite

rifle?

A:

I cannot be sure that it came from a 45 Cal. or 5.56 Armalite.

Q:

Based on what we have exhibited and the evidence, the distance from the firer and the victim, the former used an Armalite Rifle. Could it not inflict the same wounds as found on the body of the victim?

A:

It will not entail the same wounds.

Q:

The distance?

A:

I cannot say that it was fired from an Armalite Rifle. It could have been fired.

Q:

You cannot be sure from what particular firearm that caused the wounds sustained by the victim?

A:

Based on the findings in the autopsy report from 2 to 4 that could not be the basis what was the firearm used.

Q:

Nevertheless, an Armalite Rifle can inflict that kind of wounds?

A:

It could have been caused because an Armalite Rifle with 700 rounds per minute, once you press the trigger or tendency of it is that it will emit no less than 10 to 12 bullets per second.

Q:

In a single shot of an Armalite Rifle, can that kind and type of injuries found on the victim be sustained?

A:

It could be because automatic shot and single shot are one and the same.

x x x

Q:

You said on cross-examination that the three bullet wounds found on the body of the victim could have been caused by an Armalite Rifle fired in a single shot stage. My question is, will the other findings in the autopsy report sustained (sic) the same conclusion?

A:

It will be in contradiction with the findings. Based on the distance, M-16 is possible but based on the gun used, M-16 is not possible. It could not be the basis in determining.

Q:

Based on the findings in the autopsy report and the relative position that we have shown in the demonstration, could it be possible that the firearm used was an Armalite Rifle?

A:

I cannot say. [22]

The argument by the defense that the lower court did not take into consideration the testimony of De Vera as a whole is untenable and completely belied by the records of the case. On the matter of weight to be given to the testimony of an expert, this Court has held as follows:

Expert testimony no doubt constitutes evidence worthy of meriting consideration, although not exclusive on questions of professional character. The courts of justice, however, are not bound to submit their findings necessarily to such testimony; they are free to weigh them, and they can give or refuse to give them any value as proof, or they can even counterbalance such evidence with other elements of conviction which may have been adduced during the trial.[23]

Suffice it to state, expert opinion evidence is to be considered or weighed by the court like any other testimony, in the light of their own general knowledge and experience upon the subject of inquiry.[24] The probative force of the testimony of an expert does not lie in a mere statement of the theory or opinion of the expert, but rather in the aid that he can render to the courts in showing the facts which serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded.[25]

In addition, the inclusion or exclusion by the expert of factors or elements that should or should not be considered in the determination of his opinion is to be considered in determining the weight to be attached to his testimony. In the present case, the factor that De Vera used as the basis of his initial statement that a .45 caliber gun was used in the shooting, namely the nature and character of the wounds sustained by the victim, did not take into account the distance and relative position of appellant. Thus, when these points were raised during cross-examination, De Vera no longer categorically ruled out the possibility that an armalite rifle was used. On this score, it must be remembered that the character of a gunshot wound depends upon the kind of shot, the distance from the body and the gun, and the velocity with which the shot strikes the body.[26] Thus, the trial court was acting well within its discretion in not lending full-faith and credence to the testimony of De Vera which, on its face, is inconclusive as to the point being made, that is, that an armalite rifle could not have possibly been used in the killing of Roces.

Consequently, appellant's attempts to destroy the prosecution witnesses' testimonies have been rendered futile. A foundation must be laid for showing bias or prejudice of a witness in order to discredit his evidence. The absence of evidence as to an improper motive actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motive existed.[27] Where there is nothing on the record to show that the witnesses were actuated by an improper motive, their testimony shall be entitled to full faith and credit.[28] For if an accused had really nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that the prosecution witness would falsely testify against the former.[29] Evidence to be believed must not only come from the mouth of a credible witness, but must be credible in itself, such as the common experience of mankind can approve as probable under the circumstances.[30]

Based on the evidence on record, the prosecution was able to establish that appellant was issued a firearm and shot the victim thrice in the body on July 28, 1990. The wounds sustained by Roces were the direct and proximate result of his death.

In contrast, appellant's alibi and denials have not been proven by positive, clear and satisfactory evidence. It bears stressing that alibi is the weakest of all defenses because it is facile to fabricate and difficult to disprove, and is generally rejected.[31] For alibi to prosper, it is not enough to prove that the defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[32] In this case, appellant admits that on the night in question, he approached the victim and the latter allegedly attempted to strike him. In response thereto, appellant allegedly fired a warning shot in the air then left after reprimanding the group. However, this defense cannot prevail over the positive identification of appellant as the author of the crime by no less than three credible witnesses.[33]

Passion and obfuscation similarly cannot be appreciated in favor of appellant. To be entitled to this mitigating circumstance, the following elements must be present: (1) There should be an act both unlawful and sufficient to produce such condition of mind; (2) the act that produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[34] The bare assertion that the victim and appellant had an argument does not provide justifiable basis for applying to him this mitigating circumstance. The cause that produced the passion and obfuscation has not been established nor proven by clear and convincing evidence.[35] The defense advances mere speculations and conjectures to gloss over the fact that there is lack of proof of the cause. Courts are not permitted to render judgments upon guesses or surmises. Suspicion, it has been said, cannot give probative force to testimony which in itself is insufficient to establish or justify an inference of a particular fact.[36]

Finally, this Court agrees that treachery attended the slaying of Roces. This qualifying circumstance can be appreciated when the killing was sudden and unexpected and the victim is not in a position to defend himself.[37] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor.[38] The existence or non-existence of treachery is not dependent on the success of the assault, for treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[39] Thus, even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.[40]

The swift unfolding of events placed the victim in a position where he could not effectively defend himself from the assault on his person. The defense cannot refute the evidence of treachery on the pretext that the victim and his companions already saw appellant carrying an armalite and approaching their general direction. It is a well-known fact in the community that appellant is a member of the PNP-Pilar. For appellant to be seen bearing arms in the street, therefore, would not be something out of the ordinary nor would it cause panic and alarm. Neither could the fact that appellant first fired his weapon into the air be construed as sufficient warning upon the victim and his companions such that they would have had the opportunity to put up a defense. The interval of time between the first warning shot and the subsequent fatal shots is not sufficient to put the victim on guard:

Q:

Is it not true, Mr. Witness, that after the first shot fired by Floro Malejana upward there [were] several seconds interval before the second shot was fired. Is that it?

A:

It did not take ten (10) seconds that the second shot was fired. [41]

To reiterate, treachery may still be appreciated even when the victim was forewarned of the danger to his person.[42] Neither does the fact that other people were present during the shooting negate the attendance of

treachery. The suddenness of the attack prevented the victim's unarmed companions from coming to his aid.

In light of these premises, the Court finds no reversible error in the decision of the trial court. The penalty for murder under Article 248 of the RPC is reclusion perpetua to death. Considering that neither mitigating or aggravating circumstances attended the commission of the crime, the imposition by the appellate court of reclusion perpetua is proper pursuant to Article 63, paragraph 2 of the RPC.

WHEREFORE, the decision of the Regional Trial Court, Branch 51, of Sorsogon in Criminal Case No. 91-2896, as modified by the Court of Appeals, finding appellant Floro Malejana guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of reclusion perpetua is **AFFIRMED**. Appellant is likewise ordered to indemnify the heirs of the victim in the amount of P50,000 for his death.

Costs against appellant.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Records, pp. 288-293.

[2] Records, pp. 29-30.

[3] Transcript of Stenographic Notes (TSN), January 21, 1992, pp. 3-27; CA Rollo, p. 86.

[4] Id. at pp. 27-40.

[5] TSN, January 27, 1992, pp. 18-27.

[6] CA Rollo, p. 86.

[7] TSN, January 27, 1992, pp. 7-8; Records, p. 99.

[8] Records, pp. 96-97.

[9] TSN, August 5, 1992, pp. 3-24.

[10] TSN, August 5, 1992, pp. 12-13; CA Rollo, p. 87.

[11] TSN, November 3, 1992, pp. 2-9.

[12] CA Rollo, pp. 87-88.

[13] Records, pp. 197-217.

[14] Records, pp. 224-227.

[15] Id. at pp. 235-261.

[16] Id. at p. 267.

[17] Id. at p. 293.

[18] CA Rollo, p. 92.

[19] Rollo, p. 13.

[20] *People v. Flores*, G.R. No. 116524, January 18, 1996, 252 SCRA 31.

[21] *People v. de Guzman*, G.R. No. 76742, August 7, 1990, 188 SCRA 407.

- [22] TSN, August 5, 1992, pp. 20-23.
- [23] *US v. Trono*, 3 Phil. 213 (1904).
- [24] Francisco, R.J., *Evidence*, Vol. VII, Part I (1997 Ed.), p. 663.
- [25] *People v. Florendo*, 68 Phil. 619 (1939).
- [26] Francisco, R.J., *supra* note 24, p. 714.
- [27] *US v. Pajarillo*, 19 Phil. 288 (1911).
- [28] *People v. Kyamco*, G.R. No. 103805, May 17, 1993, 222 SCRA 183.
- [29] *People v. Roldan*, G.R. No. 98398, July 6, 1993, 224 SCRA 536.
- [30] *People v. Ulpindo*, G.R. No. 115983, April 12, 1996, 256 SCRA 201.
- [31] *People v. Prieto*, G.R. No. 141259, July 18, 2003, 406 SCRA 620.
- [32] *People v. Colonia*, G.R. No. 138541, June 12, 2003, 403 SCRA 713.
- [33] *People v. Torio*, G.R. No. 122109, June 25, 2003, 404 SCRA 623.
- [34] *People v. Pansensoy*, G.R. No. 140634, September 12, 2002, 388 SCRA 669.
- [35] *People v. Javier*, G.R. No. 130654, July 28, 1999, 311 SCRA 576.
- [36] *People v. Ganan*, G.R. No. 119722, December 2, 1996, 265 SCRA 260.
- [37] *People v. Aguilar*, 88 Phil. 693 (1951).
- [38] *People v. Delada, Jr.*, G.R. No. 137406, March 26, 2003, 399 SCRA 538.
- [39] *People v. Pinuela*, G.R. Nos. 140727-28, January 31, 2003, 396 SCRA 561; *People v. Rivera*, G.R. No. 125895, July 4, 2002, 384 SCRA 12; *People v. Villonez*, G.R. Nos. 122976-77, November 16, 1998, 298 SCRA 566.
- [40] *People v. Alfon*, G.R. No. 126028, March 14, 2003, 399 SCRA 64.
- [41] TSN, January 21, 1992, p. 25.
- [42] *People v. Rivera*, *supra* note 39.

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