

ROBERTO GOROSPE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 147974. January 29, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) affirming on appeal the Decision of the Regional Trial Court of Tuguegarao, Cagayan, Branch 03,[2] convicting petitioner Roberto Gorospe of frustrated homicide.

The Case for the Respondent

The case for the respondent as summarized by the Solicitor General and adopted by the appellate court is as follows:

- On December 9, 1974, at about 7 o'clock in the morning, Miguel Beran went to his farm in Bo. Alitungtung, Amulung, Cagayan. He brought along Andres Soriano, Nicolas Manayang, Alfredo Soriano, Mariano Malanot, Vicente Malanot, Deogracias Simangan, Ventura Soriano, Crispin Malanot and Ruben Soriano whom he had hired to clear his land preparatory to plowing and planting. They carried with them their tabas and calasiao (long bolos) (TSN, January 17, 1977, p. 334).
- While they were cutting weeds in the farm, appellant Roberto Gorospe and his group, namely: Hilario Siriban, Felix Ricardo, Pepito Maguddayao, Leonardo Gorospe, Domingo Cambri and Roberto Lacsa arrived at the farm (p. 334, TSN, supra).
- From a distance of about 10 meters, Miguel noticed that appellant and his group were all armed with either a long bolo or slingshot or buckshot (shotgun). As appellant approached Miguel, he drew his shotgun, aimed it at Miguel and fired hitting the latter on the chest (pp. 334-335, TSN, supra). Appellant's companion, Hilario Siriban, also fired his shotgun which was directed at Miguel (p. 335, TSN, supra).
- Immediately thereafter, appellant and his group ran away. Miguel went directly to the Police Station of Amulung, Cagayan to report the incident (p. 335, TSN, supra).
- Thereat, Miguel found out that appellant's group reported the incident ahead of him. He was advised by a Sgt. Enriquez to proceed to the Cagayan Provincial Hospital for treatment and was told that Sgt. Taccad of the same police station will go there to get his statement (p. 335, TSN, supra).
- Dr. Rafael Sumabat, a medical specialist at the Cagayan Provincial Hospital testified that he treated Miguel for gunshot wounds on his chest and left side of the body as evidenced by the Medical Certificate issued (Exh. A) with the following findings:

"The gunshot on the chest was caused by a pellet from a buckshot or a shotgun. It is a round wound with lacerated borders about 3 to 4 cms. in diameter. The second wound is also a gunshot wound located on the left side of the chest above the nipple near the armpit. ... the wound would heal from 7 to 10 days. (TSN, January

17, 1977, pp. 328-330).” (Rollo, pp. 66-68)[3]

The petitioner testified in his behalf and presented as witnesses Pepito Maguddayao, Leonardo Gorospe and Sgt. Juan Lingan. Sgt. Lingan, the Amulung Police Station Commander, testified on the entries made in the police blotter. As synthesized by the trial court and quoted by the CA in its decision, the evidence of the petitioner is as follows:

“On December 9, 1974, he was busy sharpening his bolo which he intended to use in the field for cutting grasses. After sharpening his bolo, he rested for a while to await for his companions who would also help him cut grasses. It did not take him long, and his five (5) other companions, Leonardo Gorospe, Hilario Siriban, Felix Ricardo, Pepito Maguddayao, Domingo Cambri, arrived, and immediately they started for the farm which is about less than a kilometer distance. The land is about 8 hectares. They were not able to clean the whole of the 8 hectares because the group of Miguel Beran numbering 11 in all arrived.

“There were 10 companions of Miguel Beran. They were ordered to leave the place but their group did not leave the place, hence, Miguel Beran fired a warning shot. It was a long gun. After the warning shot, followed a free for all fight or a rumble, which lasted for 30 minutes. After that they left the place and reported the incident to the Police Department of Amulung and have the case blotted.

“In rebuttal, accused denied having shot Miguel Beran; he further denied having chased the complainant. He observed that the group of Beran were armed with long bolos, sling shots, bows and arrows.

“On cross examination, he denied having ordered his group to sharpen their bolos; that after the rumble all the men in his group reported the incident to the Police of Amulung; that he did not tell the Amulung Police that Miguel Beran was wounded; what he only told was that the group of Beran arrived in the place where they were cleaning or cutting grasses; that he did not know that Beran was wounded. What he only knew was he sustained injuries, and that of his companions caused by sling shots.

“On questions by the Court, accused Gorospe insists that Beran fired a gun, but does not know whether somebody was hit; that he was about 10 meters away from Beran when he fired his gun.

“On questions by the Court, Gorospe stated that after the firing made by Beran, there was a rumble. What he meant by rumble was only an exchange of sling shots; that prior to December 9, 1974, there was a protest filed by the complainant in the Bureau of Lands, as protestants and they the protestee. They won this protest in the Bureau of Lands. Gorospe also stated that his nose suffered a hematoma caused by a sling shot that was examined by Dr. Donato, but the Doctor did not give any medical certificate.” (Rollo, pp. 24-25)

To corroborate his testimony, appellant presented Pepito Maguddayao and Leonardo Gorospe, two of his companions at the time of the incident. Appellant likewise called to the witness box Sgt. Juan Lingan, the station commander of the Police Station in Amulung, Cagayan, who testified that based on the entries in the police blotter, he brought with him in court both the groups of the private complainant and appellant [which] reported the shooting incident, with the latter group doing it ahead of that of private complainant. (TSN, July 25, 1978, pp. 2-4).[4]

After due trial, the trial court convicted the petitioner of frustrated homicide under Article 249 in relation to Article 6 of the Revised Penal Code. The decretal portion of the decision reads:

WHEREFORE, finding the accused Roberto Gorospe guilty beyond reasonable doubt of the crime of Frustrated Homicide, as defined and penalized under Art. 24[9], in relation to Art. 50 of the Revised Penal Code, he is hereby sentenced to an indeterminate sentence of 6 months and 1 day of prision correccional to 8 years and 1 day of prision mayor and to pay the cost.

SO ORDERED.[5]

On appeal, the petitioner assailed the decision of the trial court contending as follows:

- ... THAT INSPITE THAT THE EVIDENCE IS INSUFFICIENT, THE COURT CONVICTS THE ACCUSED FOR THE CRIME OF FRUSTRATED HOMICIDE;
- ... IN TAKING THE TESTIMONY OF THE WITNESSES PRESENTED WITHOUT TAKING INTO CONSIDERATION THAT THE WITNESSES PRESENTED ARE ALL THE COMPANIONS OF MIGUEL BERAN AND THEIR STATEMENTS ARE IN CONFLICT WITH EACH OTHER AND THEREFORE CREATES A DOUBT WHICH SHOULD BE CONSTRUED IN FAVOR OF THE ACCUSED;
- ... IN APPRECIATING THAT THE ACCUSED HAS THE INTENTION TO KILL THE PRIVATE COMPLAINANT DESPITE THE FACT THAT THE MEDICAL CERTIFICATION ISSUED BY THE DOCTOR WAS ONLY FOR SEVEN TO TEN DAYS HEALING PERIOD OF THE PRIVATE COMPLAINANT;
- ... IN NOT TAKING THE TESTIMONIES OF THE WITNESSES OF THE ACCUSED-APPELLANT THEIR CREDIBILITY AS WELL AS THEIR SINCERITY AND WHO ARE NOT RELATED EITHER BY CONSANGUINITY OR AFFINITY;
- ... IN IMPOSING A VERY HIGH PENALTY FOR THE ACCUSED CONSIDERING THE ABSENCE OF ANY AGGRAVATING CIRCUMSTANCES (Rollo, p. 44).[6]

On April 30, 2001, the CA rendered a decision affirming in toto the decision of the trial court. The petitioner avers in this case that:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT CONCERNING ROBERTO GOROSPE IN SPITE OF THE FACT THAT THE SAME DOES NOT CONFORM TO THE EVIDENCE ON RECORD.[7]

According to the petitioner, Andres Soriano's testimony is incredible because he reported the incident and gave his statement to the police investigators only on December 18, 1974 or nine days after the shooting. He visited his uncle, the victim, at the hospital before he gave his statement. Soriano was enveigled into testifying against his uncle. Contrary to the findings of the RTC as affirmed by the CA, the petitioner avers that he was able to prove all the requisites of the justifying circumstance for self-defense. Lastly, the prosecution failed to prove that he intended to kill the victim. Thus, he is guilty only of slight or less serious physical injuries.

After the painstaking review of the records, inclusive of the evidence of the parties in the trial court, we find the petition to be without merit. We find no reversible error committed by the RTC and the CA in their decisions.

First. We agree with the ruling of the CA that, indeed, the prosecution mustered the requisite quantum of proof, inclusive of the physical evidence and the collective testimony of the victim and Soriano, to prove that the petitioner shot the victim:

After a careful and painstaking review of the evidence on record, We rule and so hold that the People has successfully proved, beyond moral certainty of doubt, appellant's culpability for the offense charged against him.

In a frank, candid and straightforward manner, private complainant Miguel Beran positively identified the appellant as the perpetrator of the crime. Beran testified:

Q

Where were you in the morning of Dec. 9, 1974 around 7 a.m.?

A

I was in the farm.

Q

Who were your companions?

A

Andres Soriano, Nicolas Manayang, Alfredo Soriano, Mariano Malanot, Vicente Malanot, Deogracias Simangan, Ventrúa (sic) Soriano, Crispino Balanot, and Ruben Soriano.

Q

Why were these persons with you in that morning?

A

I hired them to clear my land, in [B]arro Alitungtung, Amulung, Cagayan.

Q

What did you use in clearing the land?

A

Tabas, and calasiao (long bolos).

Q

What was your (sic) purpose in clearing the land?

A

For plowing and planting.

Q

What was the size of the land to be cleared?

A

Eight and a half hectares.

Q

While you were occupied in clearing the land together with your companions was there [any] unusual incident that happened?

A

Roberto approached me and suddenly drew his gun and pointed it at me and fired which caused my injuries (pointing to his chest) (TSN, Jan. 17, 1977, p. 7; Rec. p. 334).

In like manner, another witness, Andres Soriano, also positively identified appellant as the one who shot Beran. We quote from the transcripts of stenographic notes Soriano's testimony in this respect:

Q

While you were clearing the land of Miguel Beran what unusual incident happened, if any?

A

He was shot.

Q

Who was shot?

A

Miguel Beran.

Q

Who shot him?

A

Roberto Gorospe.

Q

Was Roberto Gorospe alone?

A

They were 7 at that time.

Q

Who were the companions of Roberto Gorospe at the time he shot Miguel Beran?

A

Hilario Siriban, Roberto Lacsa, Leonardo Gorospe, Felix Ricardo, Pepito Maguddayao, Domingo Cambri.

Q

What did you observe in the person of the companions of Roberto Gorospe whose names you mentioned?

A

I saw boloes (sic).

Q

What kind of boloes (sic)?

A

Long boloes.

Q

The Roberto Gorospe you mentioned, if he is in court, will you point at him?

A

That one (pointing to the accused Roberto Gorospe) (TSN, April 20, 1977; Rec., p. 339).

Given the foregoing testimonies of the two (2) principal witnesses of the prosecution, both of whom unerringly point to appellant as the culprit, appellant's conviction is inevitable. That Beran and Soriano could not have been mistaken in identifying appellant is further accentuated by the fact that all three (3) of them are neighbors at

Barrio Alitungtung in Amulung, Cagayan. For sure, appellant is even Beran's nephew-in-law (TSN, Jan. 17, 1977, p. 7; Rec., p. 334), not to mention the circumstance that both Beran and Soriano saw appellant at a distance of only 10 meters away and in broad day light.[8]

Second. We agree with the ruling of the CA that the credibility and probative weight of the testimony of Soriano cannot be assailed simply because of the nine-day delay in reporting the crime, as well as the entries in the police blotter:

Appellant further assails Soriano's credibility by adverting to the latter's delay of nine (9) days after the incident in giving his affidavit to the police authorities. To appellant, the delay afforded Soriano "all the time to think and prepare his statement."

We are unimpressed. The delayed reporting by witnesses of what they know about the crime does not render their testimonies unworthy of credence. For the delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case (People vs. Navarro, 297 SCRA 331, 350). As aptly stated by [the] Solicitor General:

"Considering that his townmates were involved in the commission of the crime, the fear of reprisal from them was ever present (People vs. Catubig, 203 SCRA 643) and a valid excuse for his momentary silence (People vs. Peran, 215 SCRA 152). After all, delay in reporting the occurrence of a crime or other unusual event in rural areas is well known (People vs. Belen, 194 SCRA 447). It cannot thus be taken against the said witness (People vs. Carizo, 233 SCRA 687)" (Rollo, p. 76).

Appellant likewise made much of the report which he, together with his companions, made to the police authorities regarding the incident. In this respect, suffice it to say that "entries in a police blotter should not be given significance or probative value as they do not constitute conclusive proof of the truth thereof" (Santiago vs. CA, 295 SCRA 334).[9]

The petitioner's mere denial cannot prevail as against the positive and straightforward testimonies of the victim and Soriano.[10] The barefaced fact that Soriano first visited the victim at the hospital and that the victim was the Barangay Captain did not render Soriano's testimony incredible and barren of probative weight. It is but natural for Soriano to visit his relative, the victim, at the hospital. But it cannot be assumed that the victim used his relationship or the influence of his office as Barangay Captain to instigate Soriano to pervert the truth just to pillory the petitioner. On the other hand, it is unnatural for Soriano, a close relative of the victim, to tergiversate the truth and ascribe the crime charged to a person who is not the perpetrator.[11]

Third. We affirm the ruling of the CA that the petitioner intended to kill the victim:

To our mind, no error was committed by the trial court in characterizing the felonious assault as frustrated homicide and convicting appellant therefor. As correctly pointed out by the court a quo, "what is important is whether there was intent to kill on the part of Roberto Gorospe when he fired his buckshot hitting Miguel Beran on his chest and umbilicus (sic) region."

Usually, the intent to kill is shown by the kind of weapon used by the offender and the parts of the victim's body at which the weapon was aimed, as shown by the wounds inflicted (L.B. Reyes, THE REVISED PENAL CODE, 1998 ed., Bk. II, p. 480). Corollarily, conviction for a frustrated felony requires that the offender must have performed all the acts of execution which would produce the felony as a result but nevertheless did not produce it due to a cause independent of the offender's will.

Here, it is undisputed that appellant fired his gun point-blank at Beran, hitting the latter at his breast and producing wounds on the level of the 3rd rib and on the umbilicus region, with the penetrating wound on the chest being located at the mid lung zone (Medico-Legal Cert., Rec., p. 88). If anything else, the nature of the weapon used and the location of the wounds speak for themselves of appellant's intent to finish off Beran

who, by now, must have been dead if no timely medical attendance was given him. Again, and as rightly observed by the lower court, to which We fully agree:

“In the instant case, the gunshot wounds were located on the breast and umbilicous region. The wound on the chest is penetrating located at the mid lung zone. The trajectory of the pellet is towards the lung, a vital organ of the human body. True it is, that no bleeding was found inside the body, but had there been no injection of the anti-tetanus and anti-biotic injection the patient could have suffered infection or bleeding, which could cause death.”[12]

Fourth. The petitioner’s contention that he shot the victim in self-defense is inconsistent with his testimony that the victim sustained his wounds during a rumble and his denial of having inflicted the gunshot wound on the victim. One who invokes self-defense in a shooting incident thereby admits having shot the victim deliberately.

IN LIGHT OF ALL THE FOREGOING, the Petition is DENIED. The Decision of the Court of Appeals is AFFIRMED in toto. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Cancio C. Garcia with Associate Justices Oswaldo D. Agcaoili and Elvi John S. Asuncion concurring.

[2] Penned by Judge Abraham Y. Principe.

[3] Rollo, pp. 32-33.

[4] Id.at 34-35.

[5] Id.at 35.

[6] Id.at 37.

[7] Id.at 12.

[8] Id.at 38-40.

[9] Id.at 43.

[10] People v. Mercado, 304 SCRA 504 (1999).

[11] People v. Pardua, 360 SCRA 41 (2001).

[12] Id. at 44-45.

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