

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO TUVERA Y NERI, APPELLANT,

G.R. No. 149811. June 08, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Balaoan, La Union, Branch 34, in Criminal Case No. 2440 convicting appellant Rodolfo Tuvera y Neri of murder, imposing upon him the penalty of “reclusion perpetua to death” and ordering him to indemnify the heirs of the victim Orlando Tabafunda y Orfiano in the amount of P50,000.00.

Rodolfo Tuvera was charged of murder in an Information, the accusatory portion of which reads:

That on or about the 1st day of March 1995 at about 3:00 o’clock in the afternoon in Barangay Nagsabaran Sur, Municipality of Balaoan, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a short firearm Orlando Tabafunda y Orfiano thereby inflicting multiple gunshot wounds on said victim which cause[d] his death, to the damage and prejudice of the heirs of the same victim.

CONTRARY TO LAW.[2]

The appellant, with the assistance of counsel, pleaded not guilty to the crime charged.[3]

The Case for the Prosecution

At 3:00 p.m. on March 1, 1995, Pedro Pajarit, a farmer, left his house at Barangay Oya-oy, Bacnotan, La Union, and proceeded to Barangay Nagsabaran, Bacnotan, La Union to visit his friend Ricardo Obaña. Pajarit found Obaña in front of the Day Care Center with Cornelio Ablao, Carlito Obaña, Orlando Tabafunda and Arturo Gumangan. They decided to have a drinking spree and seated themselves in a round table, with Pajarit facing the east. Obaña bought San Miguel gin and half a gallon of the local wine “basi.” Pajarit noticed the appellant seated nearby, and invited him to join the group. The appellant obliged and drank wine. He offered a drink to Tabafunda but the latter refused. Momentarily, the appellant left and went to their house, which was only about fifty (50) meters away. He returned shortly, and seated himself near where Pajarit, Tabafunda and their friends were drinking.

Meanwhile, Tabafunda left the table and walked towards the direction of the north, only about four to five meters, to urinate. Tabafunda was on the northwestern side of Pajarit. The appellant, who was now armed with a handgun, stood up, followed Tabafunda. Gumangan could only watch as the appellant shot Tabafunda from behind. Pajarit turned towards where the gunshot came from and saw the appellant lowering his hand holding a firearm.[4] Pajarit, likewise, saw Tabafunda running away. The appellant, still holding his gun, followed Tabafunda but left when the latter fell to the ground, face down, blood oozing from the left side of his back below his shoulder.[5]

The matter was reported to Barangay Captain Pepito Onido, who reported the incident to the Bacnotan police station. Municipal Health Officer Felicidad Ledda performed an autopsy on the cadaver of the victim and signed a post-mortem examination report containing the following findings:

- Gunshot wound, multiple (#9), upper back, L MCL in cluster approximately about 1-1.5 cms. apart, with a wound entrance measuring approximately 0.7 cm., with an average depth of about 2 cms.

The other 2, with a wound entrance measuring about 1.5 cms. with a depth of 1.5 cms. directed to the front and slightly downwards, injuring the left lower lobe, lung.

- Hemothorax, L, massive.

Note: 3 slugs were recovered inside L thoracic cavity.

Conclusion: The cause of death is hemorrhage sec. to multiple GSW.[6]

The Case for the Appellant

The appellant testified that Pajarit, Tabafunda and himself, along with several other companions, were having a drinking spree. They invited Tabafunda to join them, but he refused. Momentarily, Tabafunda stood up and urinated nearby. Tabafunda then called the appellant and told the latter that he wanted to say something. When the appellant approached Tabafunda, the latter faced him, put his right hand on his shoulder and, with his left hand, poked a gun at the appellant. The appellant then held Tabafunda's right hand which held the gun, and grappled for the possession of the weapon. Tabafunda then punched him on the face. The appellant managed to wrest the gun away, and when Tabafunda turned his back, the gun accidentally fired once. The appellant did not know if someone was hit, but he heard Tabafunda cry in pain and saw him run away. The appellant then threw away the gun. When he saw that Tabafunda's companions had stood up, he became afraid that he would be attacked. The appellant fled from the place, towards the direction where Tabafunda had earlier run.

The appellant also recounted that he surrendered to the police authorities on March 3, 1995 in the company of Barangay Captain Pepito Onido. He claimed that he had no misunderstanding with Tabafunda and with those with whom he was drinking; hence, he had no motive to kill the victim.

After trial, the court rendered judgment convicting the appellant of murder qualified by treachery. The decretal portion of the decision reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment declaring the accused RODOLFO TUVERA y NERI guilty beyond reasonable doubt of the crime of MURDER as defined and penalized in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, Sec. 6, and thereby sentences said accused to suffer the penalty of RECLUSION PERPETUA TO DEATH, and indemnify the heirs of the victim in the amount of P50,000.00.

SO ORDERED.[7]

The Present Appeal

The accused, now the appellant, assails the decision of the trial court contending that:

I

THE LOWER COURT ERRED IN FINDING THAT THERE WAS TREACHERY IN THE COMMISSION OF THE CRIME.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER.[8]

The appellant contends that the prosecution failed to prove that he shot the victim and that even if he did so, the prosecution failed to prove the qualifying circumstance of treachery. He asserts that, as gleaned from the testimony of Pajarit and Gumangan, they did not actually see the appellant shoot the victim. He avers that the victim started the fight by poking his gun at him after he refused the victim's invitation to drink because the latter was insulted by his rejection. The bare fact that the gunshot wound was at the back of the victim is not conclusive proof of treachery. He avers that the victim was shot at the back because immediately after he (the appellant) wrested possession of the gun, the victim suddenly turned his back towards him and the gun suddenly fired.

For its part, the Office of the Solicitor General (OSG) asserts that the prosecution was able to prove treachery, thus:

First, prosecution witness Arturo Gumangan was firm in his assertion that appellant shot the victim at the back while the latter was urinating (TSN, September 17, 1997, pp. 8-9).

Second, the aforementioned attack from behind the victim is supported by the Post Mortem Examination Report issued by Dr. Felicidad Ledda who found that the victim's cause of death was due to a gunshot wound at the back (Exh. "F").

Third, the attack on the victim was without the slightest provocation on his part.

Fourth, to insure the execution of the act complained of, appellant launched the attack from behind and even appellant's companions were caught off-guard [People v. Carpio, 282 SCRA 23 (1997)]. What is decisive in the mode of attack from behind made it impossible for the victim to defend himself or to retaliate [People v. Jose, 324 SCRA 197 (2000)].[9]

The Court's Ruling

The contentions of the appellant have no merit.

The prosecution adduced proof beyond reasonable doubt that the appellant shot the victim while the latter was urinating. Arturo Gumangan testified that he saw the appellant follow the victim and shoot the latter from behind, at a distance of about seven (7) meters. Even as the victim fled from the place where he was shot, the appellant followed him and left only after the victim had fallen to the ground, on the verge of death. The testimony of Gumangan reads:

Q And while you were drinking as you said, do you recall if there was an unusual thing that happened?

A There was, Sir.

Q What was that?

A The thing that happened to Orlando Tabafunda.

Q What do you mean that happened to Orlando Tabafunda?

A He was shot, Sir.

Q Where exactly, at what place was Orlando shot?

A On the north side, Sir.

Q How far was he in the table around you, where Orlando Tabafunda was shot?

A From here up to the western wall of the courtroom, a distance of about seven (7) meters, more or less.

Q Where did Orlando Tabafunda go when you said that he was shot seven (7) meters from the table?

A He went to urinate, Sir.

Q In relation of (sic) the table, where was Orlando Tabafunda shot?

A Northwest, Sir.

Q And you said that Orlando Tabafunda went to urinate, what did he do to you when he went to urinate, what actually did he do?

A I saw him actually urinated.

Q In relation to the table, where did you position yourself?

A On the eastern part of the table, Sir.

Q When you said east somewhere north, to what direction were you facing?

A I was facing northwest, Sir.

Q And you said that Orlando Tabafunda was urinating, to what direction was he facing at the time?

A Northwest, Sir.

Q

How about the accused Rodolfo Tuvera, in relation to the place where Orlando Tabafunda was urinating, where was he?

A He was then sitting here. (Witness pointing to the south of the table)

Q What did Rodolfo Tuvera do, if any, when Orlando Tabafunda went to urinate?

A There was, Sir.

Q Could you tell the Court what he did?

A He shot Orlando Tabafunda, Sir.

Q

Alright, where was Rodolfo Tuvera in relation to Orlando who was then urinating when you said Rodolfo Tuvera shot Orlando?

A Behind Orlando Tabafunda, Sir.

Q And when Rodolfo Tuvera went behind Orlando, did you see him?

A Yes, Sir.

Q

And could you demonstrate to the Court how Rodolfo Tuvera positioned himself at the back of Orlando Tabafunda when he shot him?

A Yes, Sir.

COURT INTERPRETER:

Like this, witness standing right to the west raises his right hand extend forward in front parallel to the ground.

FISCAL TECAN:

Q How many times did Rodolfo Tuvera shoot Orlando Tabafunda?

A Once only, Sir.

Q Did you notice the weapon that was used in shooting Orlando Tabafunda?

A Yes, Sir.

Q Could you describe it to the Court?

A I don't know the kind but as long as this, Sir. [Witness indicating a foot (sic).]

Q Did you notice the barrel, long or what?

A It was long, the barrel was big.

Q What part of the body of Orlando Tabafunda was hit?

A His back, Sir.

Q What particular part of the back was hit?

A On the left side, Sir. (Witness touching the left side at the back)

Q

At the time Rodolfo Tuvera raised his gun and fired to this Orlando Tabafunda, what was Orlando Tabafunda actually doing at that time?

A He was urinating, Sir.

Q Sitting down or what?

A Standing, Sir.

Q To what direction was he facing at the time Orlando Tabafunda was urinating?

A Northwest, Sir.

Q What did Rodolfo Tuvera say, if any, before he shot Orlando Tabafunda?

A None, Sir.

Q How about this Orlando Tabafunda, what did he say, if any, before he was shot?

A None, Sir.

Q When Orlando Tabafunda was shot, what happened next?

A He ran, Sir.

Q To what direction was Orlando Tabafunda running?

A [He] proceeded westward then to the south.

Q

How about you, what did you do when you saw Rodolfo Tuvera shot Orlando Tabafunda and Orlando Tabafunda ran away?

A We went to follow them because Rodolfo Tuvera was chasing him, Sir.

Q

So, you are trying to tell the Court that when Orlando Tabafunda was shot and he ran, he was followed by Rodolfo Tuvera?

A Yes, Sir.

Q And what did Rodolfo Tuvera do aside from running after Orlando?

A No more, he just went to see Orlando Tabafunda, Sir.

Q You mean, Rodolfo Tuvera was able to catch up with Orlando Tabafunda?

A Yes, because Orlando Tabafunda tripped and fell on his face.

Q

From the place where he was chased to the place where he fell when he was chased by Rodolfo Tuvera, how far?

A

From the place where he was shot and to the place where Orlando Tabafunda was urinating, from here up to the national road. The distance is about 40 meters, more or less.

FISCAL TECAN:

May we know if the counsel for the defense will admit.

ATTY. LAUDENORIO:

Yes.

FISCAL TECAN:

Q

You said that if you take the distance in (sic) straight way, how did Orlando Tabafunda run, was it straight or what?

A He was running in a zigzagging manner directly west and later turned to the south, Sir.

Q And were you able to reach the two?

A Yes, Sir.

Q What did Rodolfo Tuvera do when you were able to reach them?

A He just looked at Orlando Tabafunda who was then shaking, Sir.

Q Do you know why Orlando Tabafunda was shaking at that time?

A I know, Sir.

Q Why?

A Because of his gunshot wound and he was dying at the time.

Q After looking at Orlando Tabafunda lying and trembling, what did he do?

A He ran away, Sir.

Q To what direction did he run?

A North, Sir.[10]

For his part, Pajarit testified that he heard a gunshot and when he looked in the direction where the gunfire emanated from, he saw the appellant lowering his hand, which held a gun:

Q

And you said that you were there at the Day Care Center at Brgy. Nagsabaran Sur, Balaoan, La Union, what were you doing there?

A We were drinking, Sir.

Q Drinking what?

A The local basi and the San Miguel Gin, Sir.

Q Now, when did you start drinking wine at the Day Care Center?

A 3:00 o'clock in the afternoon, Sir.

Q

Now, while you were there at the Day Care Center at around 3:00 o'clock of March 1, 1995, do you recall if there was anything unusual that happened?

A Yes, Sir. There was, Sir.

Q What was that unusual incident that happened, will you please tell the Court?

A A shooting, Sir.

Q And where exactly did the shooting happen?

A At the side of the Day Care Center, Sir.

Q And you said, shooting. What was the cause of the shooting or what was used in the shooting?

A Well, it was a shot, Sir.

Q Where were you exactly when you heard the shot?

A I was in front of the Day Care Center, Sir.

Q You were sitting, standing up or what?

A I was sitting, Sir.

Q While sitting there, to what direction were you facing?

A At the east, Sir.

Q

And you heard the shot which emanated, as you said, at the side of the Day Care Center. In relation to you, where is (sic) that shot that you heard?

A It came from the northwest, Sir.

Q And what did you do when you heard the shot?

A I looked to see because I was taken aback, Sir.

Q And to what direction did you look?

A Northwest, Sir.

Q And what did you see, if any?

A Rodolfo Tuvera was already lowering down with (sic) his gun, Sir.

[Witness with his right hand on the label (sic) of his waist, puts it down or lower (sic) it]

Q

And you said that Rodolfo Tuvera, do you know personally this person to whom you said you saw lowering his gun?

A Yes, Sir. He is my friend, Sir.

Q And for how long has he been your friend?

A For a long time already, Sir.

Q Could you say 20 years?

A No, Sir.

Q 10 years?

A 10 years, Sir.

Q And do you know from where is this Rodolfo Tuvera?

A Yes, Sir.

Q Where, from where is he?

A From Nagsabaran Sur, Balaoan, La Union, Sir.

Q If this Rodolfo Tuvera is shown to you now, could (sic) you be able to identify him?

A Yes, Sir.

Q Could you please look round inside the courtroom if he is in Court now?

A That one, Sir. (Witness pointing to someone and said that one in green shirt according to him)

COURT:

You are pointed to (sic) as Rodolfo Tuvera.

INTERPRETER:

Somebody was pointed by the witness and ask (sic) to point if he knows Rolando Tuvera and the Honorable Presiding Judge asked said man as pointed to by the witness to stand up and identify himself and Court Interpreter asked his name and he identified himself as Rodolfo Tuvera, Your Honor.

FISCAL TECAN:

Q Aside from being a friend, are you related to Rodolfo Tuvera?

A No, Sir.

Q When you saw Rodolfo Tuvera lowering his gun as you said, what happened next?

A The one who was shot ran in a zigzag manner, Sir.

Q Who is this person whom you said was shot and was running in a zigzag manner?

A Orlando Tabafunda, Sir.

Q You said that Orlando Tabafunda was shot, why do you say that?

A

Well, his back was already bloodied, that was what I saw, Sir.

Q

The first time that you saw Orlando Tabafunda, what was his position?

A He was urinating facing northwest, Sir.

Q

And how about this Rodolfo Tuvera, the first time that you saw him, where was he in relation to Orlando Tabafunda?

A He was at the back of Orlando Tabafunda, Sir.

Q Could you please stand up?

A

(Witness demonstrates to the Court, taking the Court Interpreter as Orlando Tabafunda and you are Rodolfo Tuvera)

Q Could you please show to the Court the relative position at the time that you saw them for the first time?

A

(Witness positioned the Court Interpreter to face the northwest as he is standing taking the role of Orlando Tabafunda. Witness now positioned himself obliquely a little to the back of Orlando Tabafunda just farther away, just a little farther away than one meter to the back when I looked at them, Rodolfo Tuvera was already lowering his gun from a parallel position to a perpendicular position with his right hand pointing towards the northwest)

ATTY. CABADING:

May we request the Court Interpreter to correct, Your Honor, to interpret only what has been said. Now, the witness mentioned that he lowered his gun, “imbabana.” That is all, Your Honor.

FISCAL TECAN:

In the demonstration, he was directly (sic) the arm towards Orlando Tabafunda and then he lowered it, Your Honor. So he is just stating the demonstration, Your Honor.[11]

The appellant admitted, when he testified, that after taking possession of the gun from the victim, the latter turned his back towards him and, at that instance, the gun he (the appellant) was holding had fired, hitting the victim who fled. The appellant also fled and threw the gun away:

FISCAL TECAN:

Q

What was the reason why, if you know that Orlando Tabafunda turned his back to you at the time you were in possession of the gun?

A Maybe the gun (sic) was already in my possession, he must have been afraid, Sir.

Q How far was Orlando Tabafunda at the time the gun fired?

A Maybe just more than a meter away.

Q You were holding a firearm at the time?

A Yes, Sir.

Q Will you tell the Court what was your position when the gun fired?

FISCAL TECAN:

He was still thinking.

A

Maybe it is only like this: I was able to grab it from him, I must have been holding this way. (Witness with his left hand holding the lower part of the left hand holding the gun and a position a little bit slanting towards the ground).

Q We understand from you that you were holding the handle of the firearm at the time?

FISCAL TECAN:

The witness is again thinking it over.

A Maybe, Sir.

Q You are very sure of the pointing (sic) is slanting towards the ground at the time the gun fired?

A I don't know, Sir.

Q How many times did the gun fire?

A Only once, Sir.

Q What happened with Orlando Tabafunda at the time the gun fired?

A He said, "annay ko" and then ran away.

Q But the firearm you were holding, you keep (sic) it into your waist, is it not?

A No, Sir.

Q What did you do with it?

A I threw it near us the (sic) place, Sir.

Q After that, you ran away?

A Yes, Sir.[12]

The testimonies of Pajarit and Gumangan are corroborated by the post-mortem report of Dr. Felicidad Ledda[13] showing that the nine entrance wounds sustained by the victim were located on his back.[14] The appellant must have used an automatic gun because the victim sustained nine wounds. The doctor recovered three slugs from the body of the victim.

We agree with the trial court and the OSG that the appellant killed the victim with treachery. The victim was urinating, impervious of the appellant's plan to kill him. The appellant approached the victim from behind and shot him, hitting the latter on the left side of the back. The victim sustained no less than nine wounds. The attack was sudden and unexpected, leaving the victim with no means to defend himself or to avert the appellant's attack. The appellant adopted a mode of attack to insure the consummation of the crime by shooting the victim from behind. The appellant's claim that the victim owned the gun is flimsy. If the claim of the appellant were true, he should have surrendered the gun to the police authorities. He did not. He threw away the gun. Moreover, Pajarit testified that shortly before the appellant shot the victim, the appellant went home and returned shortly afterwards. The appellant must have purposely done so to get his gun; and, shortly thereafter, shot the victim. In sum then, the appellant is guilty of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery.

The Proper Penalty

The trial court manifested its gross ignorance of the law in sentencing the appellant to "reclusion perpetua to death" for murder. Where the penalty imposed by law for the crime consists of two indivisible penalties, the trial court must apply Article 63 of the Revised Penal Code which reads:

Art. 63. Rules for the application of indivisible penalties.— In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

The trial court ignored the above-cited provision and sentenced the appellant to suffer "reclusion perpetua to death" despite the presence of the generic mitigating circumstance of voluntary surrender. Even if the appellant is not entitled to any mitigating circumstance, the correct penalty should only be reclusion perpetua, absent any generic aggravating circumstance attendant to the crime. Trial judges must bear in mind that, as important as the duty to determine the guilt or innocence of the accused, is the duty to impose the correct penalty on the accused especially in those cases where the imposable penalty is reclusion perpetua, or life imprisonment, or the death penalty. Penalties of imprisonment involve the liberty of the accused. For the trial court to deprive the accused of his liberty without legal basis is a travesty.

The felony of murder is punishable by reclusion perpetua to death. The appellant is entitled to the mitigating circumstance of voluntary surrender. While the Information alleges that the appellant used a firearm to kill the victim, it does not allege that the appellant had no license to possess the firearm. Neither did the prosecution prove that the appellant had no such license to possess the firearm. Being an element of the crime of unlawful possession of a firearm and a qualifying circumstance in murder or homicide, such circumstance must be alleged in the Information as mandated by Section 8, Rule 10 of the Rules of Court and proved by the prosecution.[15] Hence, the use by the appellant of an unlicensed firearm to kill the victim should not be considered against him. Consequently, the appellant should be sentenced to suffer the penalty of reclusion perpetua, conformably to Article 63 of the Revised Penal Code.

The Civil Liabilities of the Appellant

The trial court correctly ordered the appellant to pay P50,000.00 as civil indemnity to the heirs of the victim. The trial court is, likewise, correct in not ordering the appellant to pay moral damages to the victim's heirs. The prosecution failed to present any witness to prove the factual basis for such award. However, the trial court should have awarded temperate damages to the heirs of the victim. The records show that the parties stipulated that the heirs of the victim spent P19,000.00 for his burial. Since the amount of actual damages proved is less than P25,000.00, the heirs are entitled to P25,000.00 as temperate damages conformably with current jurisprudence. [16]

IN LIGHT OF ALL THE FOREGOING, the appellant Rodolfo Tuvera y Neri is found GUILTY beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of reclusion perpetua. The appellant is ORDERED to pay the heirs of the victim Orlando Tabafunda the amount of P50,000.00 as civil indemnity, and P25,000.00 as temperate damages. No costs.

Let a copy of this Decision be furnished to the Court Administrator for possible administrative charges against Judge Senecio O. Tan.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, and Tinga, JJ., concur.

[1] Penned by Judge Senecio O. Tan.

[2] Records, p. 1

[3] Id. at 16.

[4] Exhibit "B," Records, p. 208.

[5] Ibid.

[6] Exhibit "F," Records, p. 211.

[7] Rollo, p. 49.

[8] Id. at 33.

[9] Id. at 72-73.

[10] TSN, 17 September 1997, pp. 7-12.

[11] TSN, 2 October 1996, pp. 5-11.

[12] TSN, 13 January 1999, pp. 9-10.

[13] Exhibit "F," supra.

[14] Ibid.

[15] SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[16] Per Court deliberations on October 14, 2003.

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