

ARTHUR ZARATE, PETITIONER, VS. REGIONAL TRIAL COURT, BRANCH 43, GINGOOG CITY, MISAMIS ORIENTAL RESPONDENT.

G.R. No. 152263. July 03, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CR No. 20710 dated September 28, 2001, which affirmed the Decision of the Regional Trial Court of Gingoog City, Misamis Oriental, Branch 43 (trial court), finding petitioner Arthur Zarate guilty beyond reasonable doubt of the crime of frustrated homicide.

The Information[2] dated May 24, 1994 filed against Zarate was for frustrated murder, thus:

That on or about the 1st day of April 1994, at more or less 10:00 o'clock in the evening, at Barangay 9, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill, did then and there, wilfully, unlawfully and feloniously at-tack, assault and stab one Ernesto A. Guiritan, with the use of an automatic hunting knife with which the accused was conveniently provided, thereby wounding the victim on [the] epigastric area and other parts of his body, thus, performing all the acts of execution which could have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, namely, the timely and able medical assistance rendered the victim which prevented his death.

The facts are as follows:

The evidence of the prosecution established that at about 10:00 p.m. of April 1, 1994, Good Friday, Ernesto Guiritan, a homosexual and beautician, was seated alone on a bench outside the Sta. Rita Church. The church was just across the public plaza of Gingoog City separated by Cabilto Street. Arthur Zarate approached Guiritan and asked him for a cigarette. When Guiritan could not produce one, Zarate immediately stabbed Guiritan with a switchblade knife and ran away. Feeling pain and sensing that he was profusely bleeding, Guiritan walked a short distance and called for help. Eduardo Remigoso and Mario Binasbas came to his aid. Guiritan asked them to bring him to the hospital.[3]

Guiritan was brought to the Gingoog District Hospital, where he was admitted at 12:40 a.m. of April 2, 1994. Dr. Ma. Ellen Santua and Dr. Joel Babanto attended to him. According to Dr. Babanto, Zarate's condition was critical because he sustained a 2.5 centimeter stab wound at the epigastric area, penetrating and perforating the proximal third jejunum (upper part of the small intestine) and middle third transverse colon through and through, which would have caused his death if not for the immediate medical intervention. He also sustained a deep laceration on his penis. Blood transfusion was required; otherwise, he would have died of hypovolemic shock.[4]

At 5:00 a.m. of April 2, 1994, Dr. Babanto operated on Guiritan and repaired the affected jejunum and transverse colon, and sutured his penis. The operation ended at 7:30 a.m.[5]

In the morning of April 2, 1994, Senior Police Officer (SPO1) Orlando Alecha went to the hospital to investigate and take the ante-mortem statement of Guiritan, who, at that time, was lying down and feeling weak. The investigation was conducted in the Visayan dialect (Cebuano), and the questions and answers were written down by SPO1 Alecha on a piece of paper.[6] When Guiritan was giving his answers, SPO1 Alecha had to put his ear near Guiritan's mouth because Guiritan was catching his breath. Guiritan stated that he felt "as if he would die" from his wound and that "Ating Arthur Zarate" was the one who stabbed him. The inquiry was conducted in the presence of Dr. Babanto. The statement was signed by Guiritan and Dr. Babanto. Guiritan was confined in the hospital for three weeks. He was discharged on April 21, 1994. The medical and hospitalization expenses of Zarate amounted to P11,580.50.[7]

Guiritan testified that he recognized Zarate because he used to see him during the town fiestas of Consuelo, Magsaysay, Misamis Oriental playing hantak. Guiritan's friend named Maximo, who was a parlor proprietor, told him Zarate's name. Moreover, a month before the incident, Guiritan had an accidental "sexual affair" with Zarate, who thereafter asked him for money, but Guiritan had no money at that time.[8]

Petitioner Zarate put up the defense of alibi. He declared that he came to know Guiritan only in court.

Zarate testified that at 10:00 p.m. of April 1, 1994, he was near his house helping decorate the altar for the Station of the Cross that would be held at dawn the next day. The Station of the Cross was set up at the corner of his house. On the altar's side was the big cross. He asked flowers from neighbors and put the flowers on the altar. The farthest distance he had gone to gather flowers was only about 12 meters from the altar. The task was finished at midnight. He named 41 persons who were present when the Station of the Cross was being prepared. The onlookers stayed watching the altar decoration from 10:00 p.m. to midnight.[9]

Zarate declared that his house at Cabilto Street was 200 meters away from the Sta. Rita Church, which would take less than five minutes by foot.[10]

Zarate testified that he does not smoke. He also did not know of any reason why Guiritan testified that he (Zarate) was the one who stabbed him.[11]

Geronima Cuervo corroborated Zarate's testimony. She admitted that Zarate's mother was her second degree cousin. She testified that on April 1, 1994, she requested Zarate to help in preparing the Station of the Cross. There were about 20 persons present when the altar was being prepared. She declared that Zarate could not have stabbed Guiritan because from 10:00 p.m. to midnight, she had been keeping a watchful eye on Zarate and he was right there. Nevertheless, she admitted that it was possible for people around the place where the altar was being arranged to have gone somewhere without her observing them.[12]

In the Decision[13] dated April 1, 1997, the trial court did not find Zarate guilty of frustrated murder as charged, absent proof of evident premeditation and/or treachery that was alleged in the Information. Instead, Zarate was found guilty beyond reasonable doubt of the crime of frustrated homicide. The trial court held that Guiritan's positive identification of Zarate as the person who stabbed him prevails over the denial and alibi of Zarate. The dispositive portion of the Decision reads:

WHEREFORE, the accused is hereby found guilty beyond reasonable doubt of the crime of frustrated homicide and is hereby sentenced to an indeterminate sentence of 4 years, 2 months and 1 day of prision correccional maximum, as minimum, to 8 years and 1 day of prision mayor medium, as maximum, applying the Indeterminate Sentence Law.

Likewise, he is ordered to indemnify the victim the sum of P11,580.50 for medicines and hospital expenses.

SO ORDERED.[14]

Zarate appealed the trial court's decision to the Court of Appeals. In a Decision dated September 28, 2001, the appellate court affirmed the trial court's decision, thus:

WHEREFORE, premises considered, the challenged decision of the Regional Trial Court of Gingoog City, finding the accused-appellant Arthur Zarate guilty beyond reasonable doubt of Frustrated Homicide, is hereby AFFIRMED in its entirety.[15]

Zarate filed before this Court a petition for certiorari under Rule 65 of the Rules of Court, which shall be treated as a petition for review on certiorari under Rule 45 of the Rules of Court because of the nature of this case.

Zarate raised this lone issue:

THE COURT OF APPEALS ERRED IN FINDING [PETITIONER] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF FRUSTRATED HOMICIDE ON THE SOLE BASIS OF THE ANTE-MORTEM STATEMENT OF PRIVATE COMPLAINANT, TREATING IT AS PART OF THE RES GESTAE.[16]

Petitioner contends that the Court of Appeals erred in upholding the trial court's decision that the ante-mortem statement of Guiritan was part of the res gestae since the statement was taken after the operation of Guiritan in the hospital, which operation affected his mental and physical condition. Moreover, there were no witnesses presented to support the claim of Guiritan that petitioner stabbed him.

The contention is without merit.

Section 42, Rule 130 of the Rules of Court provides for the exceptions to the Hearsay Rule, which includes statements given as part of the res gestae. The pertinent provision reads:

SEC. 42. Part of the res gestae. - Statements made by a person while a startling occurrence is taking place, or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.

A declaration made spontaneously after a startling occurrence is deemed as part of the res gestae when (1) the principal act, the res gestae is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.[17]

In this case, Guiritan lost consciousness when he was brought to the hospital and regained consciousness the following morning after the operation. The hospital records[18] showed that the operation started at 5:00 a.m. and ended at 7:30 a.m. of April 2, 1994. SPO1 Alecha testified that it was also in the morning of April 2, 1994 that he took the statement[19] of Guiritan, who stated that it was petitioner who stabbed him, thus:

x x x x

Q.

Nakaila ka ba kun kinsay nagdunggab nimo?

(Do you know who stabbed you?)

A.

Ho-o, si Tating Cuerdo Zarate ug aduna siyay kauban.

(Yes, Tating Cuerdo Zarate and he had a companion.)

x x x x

Q.

Ikamatay mo ba kining imong samad?

(Are you going to die of your wound?)

A.

Morag.

(As if.)

SPO1 Alecha testified that he had to put his ear near Guiritan's mouth so that he could hear Guiritan's answers as he was catching his breath. The foregoing circumstances reveal that the statement was taken a few hours after the operation when he regained consciousness. His statements were still the reflex product of immediate sensual impressions so that it was the shocking event speaking through him, and he did not have the opportunity to concoct or contrive the story. Thus, his statement is admissible as part of the *res gestae*. Contrary to petitioner's contention, the statement was signed by Guiritan and its date was established by SPO1 Alecha.

Petitioner erred in stating that Guiritan's statement, which was admitted as part of the *res gestae*, was the sole basis for his conviction. Apart from the written statement, Guiritan, who survived the stabbing incident, positively identified appellant in open court and testified that petitioner was the one who stabbed him and that he knew petitioner even before the stabbing incident. Conviction of the accused may be had on the basis of the credible and positive testimony of a single witness.[20]

The trial court correctly disregarded petitioner's alibi and denial that he was the perpetrator of the crime. For alibi to prosper as a defense, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[21]

Petitioner claimed that at the time of the stabbing incident, which occurred at 10:00 p.m. of April 1, 1994, he was near his house helping prepare the Station of the Cross from 10:00 p.m. to midnight. However, as the trial court observed, it was not impossible for petitioner to be at the place of the stabbing incident, which happened outside the Sta. Rita Church. Based on the testimony of petitioner, Sta. Rita Church was only about 200 meters away from his house and could be reached less than five minutes by foot.[22] Hence, petitioner failed to prove that it was physically impossible for him to be present at the crime scene.

It is well settled that positive identification, where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law.[23] For this reason, the defense of alibi and denial cannot prosper in the light of the positive identification by complainant Guiritan that it was petitioner who stabbed him.[24]

It is also a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect.[25] If found positive and credible by the trial court, the testimony of a lone eyewitness, like complainant Guiritan, is sufficient to support a conviction.[26] Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility; hence, his findings will not be disturbed on appeal in the absence of any clear showing that he overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of petitioner.[27] This Court has carefully reviewed the records of this case and agrees with the findings of the trial court and the Court of Appeals.

Finally, the trial court correctly found petitioner guilty of the crime of frustrated homicide instead of the charge of frustrated murder, absent any proof of treachery or evident premeditation alleged in the Information to qualify the crime to frustrated murder.

Under Article 249 of the Revised Penal Code, the crime of homicide is punishable by reclusion temporal. Article 50 of the Code states that the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony like in this case. The penalty next lower in degree to reclusion temporal is prision mayor. Under the Indeterminate Sentence Law, the imposable penalty for frustrated homicide, absent any mitigating or aggravating circumstances, ranges from six (6) months and one (1) day to six (6) years of prision correccional, as the minimum term, to eight (8) years and one (1) day to ten (10) years of prision mayor in the medium period,[28] as the maximum term. Hence, the trial court correctly sentenced petitioner to an indeterminate prison term of four (4) years, two (2) months and one (1) day of prision correccional, as the minimum term, to eight (8) years and one (1) day of prision mayor, as the maximum term.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CR No. 20710, dated on September 28, 2001, which upheld the Decision of the Regional Trial Court of Gingoog City, Misamis Oriental, Branch 43, dated April 1, 1997, finding petitioner Arthur Zarate GUILTY beyond reasonable doubt of the crime of frustrated homicide and sentencing him to suffer an indeterminate prison term of from four (4) years, two (2) months and one (1) day of prision correccional, as the minimum term, to eight (8) years and one (1) day of prision mayor, as the maximum term, and ordering Arthur Zarate to indemnify private complainant Ernesto A. Guiritan the amount of P11,580.50 for medical and hospitalization expenses, is hereby AFFIRMED. Costs de oficio.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Oswaldo D. Agcaoili and Amelita G. Tolentino, concurring; rollo, pp. 32-35.

[2] Records, p. 2.

[3] RTC Decision, rollo, pp. 15-16.

[4] Id. at 18-20.

[5] Id. at 19; Exhibit "A-3," folder of exhibits, p. 4; Exhibit "A-23," folder of exhibits, p. 24.

[6] Exhibit "C," folder of exhibits, p. 32.

[7] RTC Decision, rollo, pp. 17, 29-30.

[8] Id. at 18.

[9] Id. at 21-22. TSN, August 7, 1996, p. 13.

[10] Rollo, p. 21.

[11] Id. at 21-22.

[12] Id. at 24.

[13] Id. at 14-31.

[14] Id. at 30-31.

[15] Id. at 35.

[16] Id. at 4.

[17] *People v. Peña*, 427 Phil. 129, 137 (2001).

[18] Exhibit "A-3," folder of exhibits, p. 4; Exhibit "A-23," folder of exhibits, p. 24.

[19] Exhibit "C," folder of exhibits, p. 32.

[20] *People v. Bulan*, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 563.

[21] *People v. Juan*, 379 Phil. 645, 666 (2000).

[22] TSN, August 7, 1996, p. 11.

[23] *People v. Aliben*, 446 Phil. 349, 385 (2003).

[24] Id.

[25] Id. at 376.

[26] *People v. Segobre*, G.R. No. 169877, February 14, 2008, 545 SCRA 341.

[27] *Supra* note 21, at 376.

[28] The maximum penalty is prision mayor in the medium period in the absence of any mitigating or aggravating circumstances pursuant to Art. 64(1) of the Revised Penal Code.

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