

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO LATAG ALIAS “CARDO”, APPELLANT.

G.R. No. 153213. January 22, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Treachery as a qualifying circumstance must be proven as clearly and as convincingly as the killing itself. In the present case, since no qualifying circumstance was proven beyond reasonable doubt, the crime is homicide, not murder.

The Case

Ricardo Latag alias “Cardo” appeals the February 27, 2002 Decision^[1] of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case No. 0083-2000, finding him guilty of murder and sentencing him to reclusion perpetua. The dispositive part of the RTC Decision is worded thus:

“WHEREFORE, the Court finds the accused, RICARDO LATAG alias ‘CARDO’, guilty beyond reasonable doubt, as principal by direct participation, of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, without any modifying circumstance, and sentences him to suffer the penalty of RECLUSION PERPETUA, with all its accessory penalties, and to pay the costs of this suit.

“The accused is also ordered to pay to the heirs of Judie Acosta the sums of P50,000.00, as indemnification for his death, and P80,000.00, as actual damages.”^[2]

The Information^[3] dated February 7, 2000, charged appellant as follows:

“That on or about the 31st day of December, 1999 at about 8:00 o’clock in the evening at Brgy. Tanguay, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a firearm (cal. 22), with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the use of said firearm (cal. 22) suddenly and without warning one Judie Acosta thereby inflicting upon the latter gunshot wound on his body which directly caused his death.”^[4]

Upon his arraignment on September 6, 2000,^[5] appellant, assisted by his counsel,^[6] pleaded not guilty. After trial in due course, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“On December 31, 1999, at 7:00 in the evening, prosecution witness Alejandro Atienza, Armando Lumbera, Norberto Africa, Alfredo Lumbera, Angelito Africa, a certain Ka Nardo and Ka Efren, together with victim Judie Acosta were celebrating New Year’s eve at the back of the house of a certain Carlos Librea at Barangay

Tanguay, Lipa City. The group was in a long table and happily drinking Gilbey's gin to welcome the new year. Victim Judie Acosta was at the left side of the long table and was seated between prosecution witness Alejandro Atienza and Jun Africa, at the far end left of the long table.

"While they were celebrating in a festive mood, a gunshot was heard coming from the direction of the left side of the long table they were occupying. Thereafter, prosecution witness Alejandro Atienza looked towards the direction where the gunshot was heard and saw accused-appellant Ricardo Latag holding a firearm (caliber .22) and standing behind the San Francisco shrubs which served as 'fence' of the yard of Carlos Librea's house.

"In the aftermath of the gunshot report, the victim Judie Acosta shouted 'Kuya Caloy, may tama ako.' He was later found to have been hit at the left back portion of his armpit. Accused-appellant Ricardo Latag, while still holding a firearm fled towards the east. The victim was later brought to the hospital by his father but later succumbed to the gunshot wound.

"The autopsy report dated December 31, 1999 showed the following findings:

x x x x x x x x

'A. EXTERNAL FINDINGS:

- Gunshot wound, entrance, measuring 0.5 x 0.5 cm., at the level of the 7[th] intercostal space, postaxillary area, left
- No exit wound but bullet was found embedded at the skin, lumbar area, posterior right

'B. INTERNAL FINDINGS:

- Hemothorax – liters
- (+) Perforation – Lower lobe of the left lung
- (+) Perforation – Diaphragm, left
- (+) Perforation – Fundus of the stomach
- (+) Perforation – Descending Thoracic Aorta

'CAUSE OF DEATH:

CARDIORESPIRATORY ARREST SECONDARY TO HYPOVOLEMIA SECONDARY TO GUNSHOT WOUND.'"[7] (Citations omitted)

Version of the Defense

The defense states its version of the facts in the following manner:

"Ricardo Latag alias 'Cardo' averred that on December 31, 1999 at around 6:00 o'clock in the evening, he was at the house of Cristino Kalaw looking for Romeo Kalaw to seek the latter's help in applying for a job with a certain Mr. Puno. Since Romero was not home, Cristino accompanied him to the place where Romeo was. Upon seeing Romeo, he informed him of his intention. Cristino and he left at around 7:00 o'clock in the evening. After parting ways with Cristino, he met his 'barkada,' Jay Tolentino, who invited him to drink at the latter's house. Jay Tolentino, Simeon Tolentino (Jay's father) and he finished drinking three (3) bottles of gin at around 10:00 o'clock in the evening. After which, Jay accompanied him to the tricycle station. He got home at 11:00 in the evening.

"He is not on speaking terms with Alejandro Atienza because the latter stabbed him on August 22, 1999. He believes that Alejandro Atienza testified against him to place him behind bars so that he could not file a case

against the latter.

“SPO1 Mario Magnaye conducted the investigation regarding the killing of Judie Acosta. On December 31, 1999, at around 8:30 o’clock in the evening, he, together with other policemen, proceeded to the Mary Mediatrix Hospital where the victim was brought. The victim was shot to death. Then, they proceeded to the house of Carlos Librea where the victim and his friends had allegedly drunk earlier. Upon inquiries, they learned that the assailant allegedly positioned himself at the back of the thick shrubs from where he fired at the victim. The San Francisco shrubs are seven to ten meters away from the table. The place was illuminated only with a single electric bulb which was not so bright. With the use of a flashlight, he searched around the shrubs but failed to find any empty shell.”[8] (Citations omitted)

Ruling of the Trial Court

The RTC found that Prosecution Eyewitness Alejandro Atienza’s testimony positively identifying appellant as the gunman was sufficient to convict him of murder. Moreover, he failed to show that Atienza’s testimony was ill-motivated.

Appellant anchored his defense on bare denials and alibi. When unsubstantiated by clear and convincing evidence, however, such defenses are self-serving, deserving of no weight in law, and of no greater evidentiary weight than the positive testimony of a credible witness. Appellant admittedly took only a half-hour or at most an hour to traverse by tricycle the distance from where he claimed he was to where the killing had taken place. Considering this admission, the trial court held that it was not impossible for him to have been at the crime scene at the time.

Hence, this appeal.[9]

Issues

In his Brief, appellant raises the following alleged errors for our consideration:

“I

The trial court gravely erred in its finding that the qualifying circumstance of treachery attended the commission of the crime charged.

“II

The trial court gravely erred in giving credence to the alleged positive identification of the accused-appellant by alleged eyewitness Alejandro Atienza.”[10]

For clarity, we shall discuss these issues in reverse order.

The Court’s Ruling

The appeal is partly meritorious. The qualifying circumstance of treachery cannot be appreciated against appellant. He should be convicted of homicide, not murder.

First Issue:

Positive Identification

Appellant contends that Atienza could not have identified the assailant, because the shooting had occurred at night in a place dimly lit by a single light bulb. That it was dark was corroborated by the investigating policeman, SPO1 Mario Magnaye, who testified that there had indeed been not much illumination from that single light bulb.[11] It is further alleged that since Atienza had been drinking gin for an hour, then his vision might have been obscured by his alcohol intake.

Appellant alleges a history of hostility between him and Atienza, who supposedly stabbed him after an altercation sometime in 1999. Surmising that, in order for Atienza to evade the case that appellant might file against him, it would not be farfetched for the former to pin this murder case on the latter.

We are not convinced.

First, Atienza's testimony disproves the "poor illumination" claim of appellant, who testified thus:

"Q:

And what was the lighting condition at that place, the reason why you were able to see Ricardo Latag considering that it was already about 8:00 o'clock in the evening?

A:

A bulb, sir.

Q:

Where was that electric bulb located that illuminated the place?

A:

At the corner or the back of the house of Carlos Librea, sir.

Q:

How far was it from the table where you were seated around?

A:

It was between the table and the San Francisco shrubs.

Q:

From the table where you were drinking, which is nearer[, t]he shrub or Ricardo Latag?

A:

San Francisco shrubs, sir.

Q:

So Ricardo Latag was behind or over the other side of the San Francisco shrubs serving as the fence from the point of view of the table?

A:

Yes, sir.

Q:

And you said that you saw Ricardo Latag after hearing one single shot holding a caliber .22 firearm. After you saw him in that position, what did Ricardo Latag do if [he] did anything more?

A:

He ran to the east, sir.”[12]

On cross-examination, Atienza affirmed that the place was well-lighted by an electric bulb:

“Q:

If you were seated, how high is that light placed where you were drinking?

A:

(Witness pointing to the ceiling of the courtroom which is estimated to be more or less 8 to 10 ft. from the floor.)

Q:

So from your head, it is approximately 6 ft. above when you were seated?

A:

Yes, sir.

Q:

And what kind of light was that?

A:

A bulb, sir.

Q:

You did not notice the wattage of that bulb?

A:

No, sir.

Q:

But it was very bright?

A:

Yes, sir.”[13]

Second, he, appellant and the victim all lived in Barangay Tanguay, Lipa City. Thus, because of his familiarity with appellant, it would not have been difficult for Atienza to readily identify the former. We quote the latter’s testimony:

“Q:

Why do you know Ricardo Latag?

A:

I have known him since the beginning because we are both from Tanguay, sir.

Q:

How about Judie Acosta. Do you know him?

A:

Yes, sir.

Q:

Why do you know Judie Acosta?

A:

He also resides at Tanguay, Lipa City, sir.”[14]

Third, that the intoxication of Atienza might have impaired his vision is highly speculative, being based on pure conjecture. No evidence was ever presented to support the claim that he had already been intoxicated. It must be noted that there were 12 men drinking on that fateful night. In the normal and usual round of drinks among friends, it is doubtful whether, within one hour, the average drinker would be in such state of intoxication as to mistake a familiar person for another.

Fourth, the defense’s contention of animosity between appellant and Atienza remains a mere supposition. The former failed to present proof of the alleged stabbing incident or evil motive that had allegedly impelled the latter to testify against him. It is a fundamental principle in our rules on evidence that those who allege must prove their allegation.[15]Second Issue:

Treachery

Appellant contends that treachery was not duly proven because the prosecution witness, Atienza, did not actually see how the shooting had commenced. After hearing a gunshot, the latter turned his head and saw the former holding a gun. Atienza became aware only of the succeeding events after the gun had been fired; hence, he could not provide details on how the attack began.

We are persuaded.

We believe that, contrary to the trial court’s finding, the prosecution failed to prove that treachery had attended the killing. For treachery to be present, it must be proven 1) that the means, methods or forms of execution gave the person attacked no opportunity for self-defense or retaliation; and 2) that these were deliberately and consciously adopted without danger to the attacker.[16]

In the present case, we find nothing in the records that shows the exact manner of the killing. Though Atienza turned around immediately after hearing a gunshot, he could not, and in fact did not, testify as to how the attack had been initiated. The fact that appellant was standing behind some shrubs when he shot the victim does not by

itself sufficiently establish that the method of execution gave the latter no opportunity for self-defense. Nor was the attack deliberately and consciously adopted by the former without danger to himself.

Treachery cannot be presumed where the lone witness has not actually seen the commencement of the attack, as we held in *People v. Narit*:^[17]

“x x x. [Treachery] cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. For, as held in *U.S. vs. Perdon* where no particulars are known as to the manner in which aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery. Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.”^[18]

Likewise, treachery must be as unequivocally proven as the crime itself, as we ruled in *People v. Rapanut*:^[19]

“x x x. We think, however, that the trial court erred in finding that the killing of Amado Somera was attended by treachery. Nobody witnessed the commencement of the attack. The prosecution witness Maximo Manuel said he saw the accused-appellants after the shooting. It was precisely because of the gun reports which he heard which attracted his attention. Circumstances which qualify criminal responsibility cannot rest on mere conjecture, no matter how reasonable or probable but must be based on facts of unquestionable existence. The rule is that such circumstances must be proved as indubitably as the crime itself. Therefore, as in this case, where the lone eyewitness did not see how the attack was carried out and he can not testify on how it began, the trial court cannot merely surmise from the circumstances of the case that treachery attended the commission of the crime.”^[20]

Furthermore, no other circumstance attendant to the shooting supports the allegation that appellant carefully and deliberately planned the killing in a manner that would ensure his safety and success. There were no indications that he had deliberately chosen the place, the time or the method of killing. In addition, there was no showing that the meeting between him and the victim had been planned. The fact that the former was seen by Atienza behind some shrubs after a gunshot had rung out does not, by itself, compel a finding of treachery. Such a finding must be based on some positive proof, not merely on an inference drawn more or less logically from a hypothetical fact. Apparent from the assailed Decision of the trial court is that it simply surmised that treachery had attended the killing. It held as follows:

“The shooting of Judie Acosta, who was unarmed and unaware of the presence of the accused, who hid himself behind the San Francisco shrub at night time, which appears to have been purposely sought to facilitate the killing, without risk to himself, is treacherous. The treachery qualifies the killing to murder. The generic aggravating circumstance of nocturnity, however, is absorbed by treachery.”^[21]

There is doubt whether appellant purposefully sought the means he employed in killing the victim. As earlier mentioned, treachery cannot be presumed; it must be proven as fully and as convincingly as the crime itself. Any doubt as to the existence of treachery must be resolved in favor of the accused.^[22]

Crime and Punishment

The penalty for homicide under Article 247 of the Revised Penal Code is reclusion temporal. Because no aggravating or mitigating circumstances were proven, the appropriate penalty is reclusion temporal in its medium period.^[23] Appellant is likewise entitled to the benefits of the Indeterminate Sentence Law.

WHEREFORE, the appealed Decision is hereby MODIFIED. Appellant is CONVICTED of homicide and SENTENCED to an indeterminate penalty of eight years of prision mayor medium, as minimum; to fourteen years and eight months of reclusion temporal medium, as maximum. The award for civil indemnity and actual

damages, which have been proven, is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 14-19; records, pp. 136-141. Written by Judge Vicente F. Landicho.

[2] RTC Decision, pp. 5-6; rollo, pp. 18-19; records, pp. 140-141.

[3] Signed by Second Assistant City Prosecutor Jaime M. Borja.

[4] Rollo, p. 5; records, p. 1.

[5] See Order dated September 6, 2000; records, p. 15.

[6] Atty. Agripino Bravo.

[7] Appellee's Brief, pp. 4-6; rollo, pp. 71-73. Signed by Assistant Solicitors General Carlos N. Ortega and Fernanda Lampas Peralta and Associate Solicitor Josephine de Sagon Mejia.

[8] Appellant's Brief, pp. 4-5; rollo, pp. 38-39. Signed by Attys. Amelia C. Garchitorena, Teresita S. de Guzman and "for" Melita E. Lauron of the Public Attorney's Office (PAO).

[9] This case was deemed submitted for decision on October 14, 2003, upon receipt by this Court of appellee's Brief. Appellant's Brief was received on May 29, 2003. The filing of a reply brief was deemed waived, as none had been filed within the reglementary period.

[10] Appellant's Brief, p. 1; rollo, p. 35. Original in upper case.

[11] TSN, July 19, 2001, p. 12.

[12] TSN, November 22, 2000, pp. 13-15.

[13] *Id.*, pp. 28-29.

[14] TSN, November 22, 2000, p. 5.

[15] *People v. Aquino*, 322 SCRA 769, January 20, 2000; *People v. Villagonzalo*, 238 SCRA 215, November 18, 1994.

[16] *People v. Bayotas*, 348 SCRA 627, December 19, 2000; *People v. Baltar Jr.*, 347 SCRA 579, December 11, 2000; *People v. Caber Sr.*, 346 SCRA 166, November 28, 2000.

[17] 197 SCRA 334, May 23, 1991.

[18] *Id.*, p. 351, per Davide Jr., J. (now CJ).

[19] 331 Phil. 820, October 24, 1996, per Mendoza, J.

[20] *Id.*, p. 836, per Mendoza, J.

[21] RTC Decision, p. 5; rollo, p. 18; records, p. 140.

[22] *People v. Boller*, 380 SCRA 217, April 3, 2002; *People v. Guzman*, 372 SCRA 344, December 14, 2001; *People v. Bahenting*, 303 SCRA 558, February 24, 1999.

[23] As provided for under paragraph 1 of Article 64 of the Revised Penal Code.

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