

ORLANDO SOLIS UNGSOD, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 158904. December 16, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals promulgated on 03 December 2002 and of the Resolution[2] dated 20 May 2003 denying petitioner's motion for reconsideration. The assailed decision and resolution, in turn, affirmed with modification the decision[3] of the Regional Trial Court, Branch 49, Puerto Princesa City, finding petitioner guilty beyond reasonable doubt of the crime of homicide in Criminal Case No. 13438.

The Court of Appeals established the facts of the present case in this wise:

Appellant [petitioner herein] is charged of (sic) Murder committed as follows:

That on or about the 21st day of November, 1996, at more or less 11:30 in the evening, at Rainbow Lodging and Sing-along Bar, Barangay Poblacion, Municipality of Taytay, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with treachery and evident premeditation and with intent to kill and while armed with a firearm did then and there willfully, unlawfully and feloniously attack, assault and shoot one PO3 RONILO GOOT GAYUTIN, PNP, hitting him on his head that caused multiple skull fracture involving the temporal and occipital bones which was the direct and immediate cause of his death.

CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty to the charge, whereupon trial on the merits commenced.

The evidence for the prosecution established the following:

On the night of November 21, 1996, PO3 Ronilo Goot Gayutin (Gayutin), together with Napoleon Batoy (Batoy) and Jerry Reyes (Reyes), arrived at Rainbow Sing-Along and Lodging House located at Poblacion, Taytay, Palawan. They ordered beer and started to sing along to the music of the videoke machine. After consuming one bottle of beer, Gayutin joined the group of appellant seated at another table. Batoy went to Room 4 of the Lodging House where they had checked-in.

Moments later, Reyes saw Gayutin happily conversing with appellant as the two were long lost friends. Batoy, who came back from Room 4 was introduced by Gayutin to appellant. He saw the two, whom he knew to have been long time friends, happily conversing with each other. After a few minutes, Reyes lost sight of Gayutin and appellant. However, Ricardo Pe (Pe), the owner and operator of the joint, saw them enter the comfort room together. At that moment, Batoy, who had by then rejoined Reyes at their table stood up and proceeded to the comfort room to relieve himself.

Upon entering the comfort room, Batoy saw appellant strangling with his left hand Gayutin while the latter was

struggling to free himself. Although their backs were turned against Batoy, the latter was able to recognize appellant's face as he turned for it was illuminated by the comfort room light. Batoy thereafter called for Reyes to pacify the two.

When Reyes saw Batoy waving with a flashlight, he immediately went to the comfort room and saw appellant still strangling Gayutin with his left hand while his right hand was raised up to his waistline as "if holding something." But he could not see what it was as he was positioned behind the two. He tapped the shoulders of appellant and Gayutin. He told appellant twice "Kuya Orly, huwag po, kasamahan po namin yan, bali escort ng Club Noah iyan." Appellant, however, told him to get out if he [did not] want to get involved. He then left as instructed and went straight to the counter and asked the owner to call the police. After 3 or 4 seconds, they heard a gunshot from the comfort room which caused the customers to scamper away. Reyes, who was left inside the Bar, saw appellant come out of the comfort room. Another witness, Zosimo Abis, Jr. (Abis, Jr.) saw appellant come out of the comfort room with bloodstains on his clothing and holding a .45 caliber pistol handgun. Appellant pointed the pistol at Abis, Jr. and his companion. After cocking it several times, one live bullet was ejected from its chamber. After appellant left, Reyes and Abis, Jr. went out of the bar. Reyes joined Batoy in their room. Abis, Jr. proceeded straight to the house of his brother SPO1 Arturo Abis, and reported the incident to him.

When Reyes and Batoy went back inside the bar, they saw the dead, bloodstained body of Gayutin sprawled on the comfort room floor.

Thereafter, SPO1 Arturo Abis arrived and immediately conducted an investigation. He found the body of Gayutin prostrate on the pavement on the floor of the comfort room with one bullet wound at the back of his head. He found a broken slug of an undetermined caliber inside the comfort room, a live bullet of a caliber .45 pistol outside the door of the comfort room and an empty bullet shell of the same caliber outside the bar. He likewise saw bloodstains on the wall of the comfort room. He then took pictures of the physical evidence. From the testimonies of witnesses, he learned that appellant gunned down Gayutin.

The following day, November 22, [1996], at the PNP Police Station of Roxas, Palawan, P/Senior Inspector Leopoldo Pacaldo, the Chief of Police, received an order from the Provincial Director of Palawan, directing him to arrest appellant who allegedly shot Gayutin to death. He then instructed his deputy to check all the vehicles coming from Taytay and to look for and arrest appellant who might be on board. Later, his men came back together with appellant. Inside his office, one of the policemen noticed that something was bulging on appellant's waistline so he asked the latter whether he has a firearm to surrender to which appellant asked for a receipt. Thereafter, Pacaldo received a radio call from the Provincial Director instructing him to personally escort appellant to the Provincial Headquarters. Before leaving, Pacaldo instructed his deputy to take over and the chief investigator to prepare the receipt. When he came back, SPO2 Rafols gave him the gun confiscated from appellant, a caliber .38 revolver with Serial Number 03326. Appellant was given a copy of the receipt. They then boarded a jeep going to the Provincial Headquarters.

Pacaldo admitted that his men were not armed with a warrant of arrest when they brought appellant to the police station; that appellant was not provided with a lawyer. Although he did not personally see the actual turn over of the gun to SPO2 Rafols, he was sure that it was the gun confiscated from the appellant.

Dr. Eduardo Cruz, the Municipal Health Officer of Taytay, Palawan conducted an autopsy on November 22, 1996. He found out that Gayutin died of a single gunshot wound on his head, the bullet entering the back thereof and the slug breaking into two with the first having exited at the side of the head just below the right ear and the other exiting at the right temple. The bullet wound caused the instantaneous death of Gayutin.

For the defense, the evidence established the following;

At about 11:30 in the evening of November 21, 1996, appellant was drinking a bottle of beer inside a sing-along bar at Taytay, Palawan. Gayutin approached him and exchanged pleasantries. Gayutin introduced him to a certain Napoleon Batoy. Thereafter, he excused himself and went to the comfort room. Gayutin likewise went to the comfort room and they again exchanged pleasantries. After urinating, appellant left Gayutin behind along with two other persons inside the comfort room. When he went back to his table, he heard a gunshot and the people inside the bar scampered away. He also ran away and went home.

After the November 21, 1996 incident, no one from the Taytay Police Station arrested or questioned him. Neither did they inform him that he was a suspect in the shooting of Gayutin.[4]

On 24 March 1999, petitioner filed a motion to dismiss on demurrer to evidence[5] arguing that the combination of prosecution's evidence failed to prove his guilt beyond reasonable doubt for the killing of Gayutin. As for his alleged illegal possession of firearm for which he was charged in Criminal Case No. 13370,[6] and which case was jointly tried with the murder charge, petitioner maintained that no reliable and independent evidence was presented before the court to prove that a caliber .38 revolver bearing Serial No. 03326 was indeed confiscated from him. The prosecution's lone witness on this matter, P/Senior Inspector Pacaldo, did not personally witness the actual taking of the supposed illegally possessed gun as the same was merely turned over to him by a certain SPO2 Rafols.

In its order dated 24 September 1999,[7] the trial court directed the dismissal of Criminal Case No. 13370. According to the court a quo, the arrest of petitioner and the eventual confiscation of the gun from his person did not fall within any of the exceptions provided in Rule 113, Section 5 of the Rules on Criminal Procedure[8] thereby warranting the dismissal of the charge for illegal possession of firearm against petitioner. However, the demurrer was denied with respect to the murder charge.

In its decision[9] dated 15 January 2001 and which was promulgated in open court on 19 January 2001, petitioner was found guilty beyond reasonable doubt of the crime of homicide. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court finds accused Orlando Solis Ungsod guilty beyond reasonable doubt of the crime of Homicide and, there being no mitigating nor aggravating circumstance and applying the Indeterminate Sentence Law, hereby imposes upon the accused the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Accused Orlando Solis Ungsod is directed to pay the surviving spouse of victim PO3 Ronilo Goot Gayutin the amount of P50,000.00 as civil indemnity and, as no claim for actual damages was made as the same was reimbursed by the Philippine National Police (PNP), to pay said surviving spouse the amount of P50,000.00 as moral damages and the amount of P25,000.00 as attorney's fees.[10]

Petitioner seasonably filed his notice of appeal. However, in the decision now assailed before us, the Court of Appeals sustained the trial court's finding with respect to petitioner's guilt as well as the award of damages but modified the period of his imprisonment, thus:

WHEREFORE, foregoing premises considered, the Decision dated January 15, 2000 is hereby AFFIRMED with MODIFICATION. Appellant is hereby sentenced to suffer the penalty of imprisonment from 6 years and 1 day of prison mayor as minimum, to 14 years and 8 months and 1 day of reclusion temporal as maximum. The award of damages is likewise affirmed.[11]

With the subsequent denial of his motion for reconsideration, petitioner is now before this Court raising the following issues for our resolution:

- Whether or not the facts constituting the circumstantial evidence found by the trial court and adopted by the court a quo [sic] to be present are sufficient to support the conviction of the petitioner; and

- Whether or not the award of attorney's fees and moral damages were correct.[12]

There is no question that petitioner's conviction by the trial court was based purely on circumstantial evidence, to wit:

(a) On the night of November 21, 1996 at around 11:00 o'clock in the evening, both the accused and the victim, PO3 Ronilo Goot Gayutin, were at the Rainbow Lodging and Sing-along Bar in Barangay Poblacion, Taytay, Palawan;

(b) The accused and Gayutin were seen by Jerry Reyes and Napoleon Badoy inside the comfort room of that establishment and Gayutin was being strangled by Ungsod with his left hand, while the two were struggling with each other. The right hand of the accused was in his waistline (TSN, April 13, 1998, pp. 7, 15);

(c) When Jerry Reyes tried to pacify the two, the accused told him, "kung ayaw ninyong madamay lumabas kayo" (TSN, April 13, 1998, p. 7; March 23, 1998, pp. 11-12);

(d) A moment later, a gunshot was heard from inside the comfort room occupied by the accused and Gayutin (TSN, April 13, 1998, p. 8; March 23, 1998, p. 12);

(e) The accused immediately left the bar, and Jerry Reyes, Napoleon Badoy and Ricardo Pe (owner of the bar) looked inside the comfort room and found that Gayutin had been shot to death and was sprawled on the floor of the comfort room (TSN, March 23, 1998, p. 14; April 13, 1998, p. 10; June 9, 1998, p. 9);

(f) SPO1 Arturo Abis who arrived at the bar that same night found a slug and holster and one live ammo of a caliber .45 gun inside the comfort room where Gayutin's body was found (TSN, March 2, 1998, pp. 24-25);

(g) The accused is a [licensed] holder of a pistol, Remington, Caliber .45 with serial number 1762897 (Certification, Exh. "U");

(h) Dr. Eduardo Cruz, who made the autopsy report, stated that the victim died instantaneously of Neurogenic shot underlying a gunshot wound in the head. The slug exited from two points of exit (TSN, March 30, 1998, p. 9).

Petitioner argues that the Court of Appeals erred in adopting the eight attending circumstances enumerated above and that assuming them to be true, still, the combination of these circumstances does not support a finding of guilt against petitioner. The fact that petitioner was seen by Batoy and Reyes strangling Gayutin before the gunshot was heard does not readily point to petitioner as the one who inflicted the fatal shot in the absence of proof that he was armed with a caliber .45 revolver at that time.

Moreover, it was quite possible that at the time Batoy and Reyes went to the counter of the sing-along bar to seek police assistance, another person could have fatally shot Gayutin. Nor could their testimonies as regards the presence of other person or persons inside the comfort room be given credence as their eyes were not fixed at the entrance of said room all the time.

Petitioner likewise impugns the autopsy report conducted on the remains of Gayutin for its failure to indicate whether he was shot at short range as there was no testimony regarding the possibility that the bullet which felled the victim was fired outside the comfort room.

For its part, the Office of the Solicitor General counters that the incriminating circumstantial evidence points to petitioner as the gunman who shot and killed Gayutin. While there is no direct evidence showing that it was petitioner who actually shot Gayutin in the head, still, the testimonies of Reyes and Batoy with regard to what transpired inside the comfort room between petitioner and Gayutin, together with the other circumstances identified by the trial court, suffice to establish "an unbroken chain which leads to one fair and reasonable

conclusion which points to petitioner as the one who shot the victim, Ronilo Goot Gayutin." [13]

The petition is bereft of merit.

Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue." [14] Circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting felons free. [15]

The standard that should be observed by the courts in appreciating circumstantial evidence was extensively discussed in the case of *People of the Philippines v. Modesto, et al.*, [16] thus:

. . . No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.

It has been said, and we believe correctly, that the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused. [17]

In this case, we hold that the circumstantial evidence presented by the prosecution warrants the finding of guilt of petitioner. Under Rule 133, Section 4, of the Rules of Court, it is stated that there is sufficiency in circumstantial evidence when: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The circumstances earlier enumerated upon which the conviction of petitioner was anchored satisfactorily meet the requirements of the rules.

The testimonies of the prosecution's witnesses, particularly those of Batoy and Reyes, indubitably confirm the culpability of petitioner. Their testimonies relating to the occurrences prior to and after the lethal gunshot was heard were noticeably straightforward and consistent with one another; thus, we are inclined to give credence to their testimonies rather than believe the bare denial of petitioner for mere denials are only self-serving negative evidence which cannot outweigh circumstantial evidence clearly establishing his active participation in the crime. [18]

While petitioner would like to impress upon this Court that Gayutin may have been felled by someone else, he lamentably failed to proffer any evidence to support his claim. Thus, while he claimed that there were two other persons who were with him in the comfort room before Gayutin himself went inside said room, [19] Batoy's and Pe's testimonies offered a different scenario altogether. According to Batoy, after he and Reyes left the comfort room, the only persons left behind were Gayutin and petitioner. [20] In addition, Batoy estimated that with the size of the comfort room, which he estimated to be one meter by one and a half meters, or just enough to accommodate three persons at a time. [21] This was corroborated by Pe when he testified that the comfort room in his establishment was very small and that it would already be crowded if two persons simultaneously make use of the facility. [22] Such being the lay-out of the comfort room where the crime was committed, petitioner's testimony as regards the presence of the two other persons becomes highly suspect.

Equally worthy of note is the fact that petitioner did not even bother to describe the physical appearance of the two persons who were allegedly in the comfort room with him and Gayutin on that fateful night. We cannot

overemphasize the importance of such information as to him particularly since he was trying to establish the possibility that another person or persons inside the comfort room could have killed Gayutin.

Another factor that we simply cannot overlook are Bayot's and Reyes's testimonies as to what transpired before Gayutin and petitioner moments before the victim was shot dead. To be sure, their testimonies relating to the incident inside the comfort room were consistent on material points and petitioner was not able to present a viable evidence to refute them except his ineffectual assertion that Gayutin was alive when he left the comfort room. Significantly, according to petitioner himself, Bayot was introduced to him only during that night[23] and that he (petitioner) could not think of a reason why Bayot would testify against him.[24] As for Reyes, petitioner would like to impress upon us that said witness may have held a grudge against him as he was previously involved in a shooting incident with the bodyguard of a certain Mayor Evelyn Rodriguez who is Reyes's relative.[25] Such supposition on petitioner's part fails to convince into dismissing the otherwise clear and forthright testimony of Reyes.

As regards petitioner's contention that the gunshot may have been fired from outside the comfort room, suffice it to state here that the records are bereft of any indication that this matter was raised by him before the trial court. More importantly, the witnesses presented by the prosecution consistently stated before the trial court that the sound of the gunshot emanated from within the comfort room contravening petitioner's conjecture in this matter.

Petitioner likewise harps on the prosecution's failure to present the records from the Firearms and Explosives Department of the Philippine National Police at Camp Crame of the .45 caliber Remington pistol owned by petitioner for comparison with the specimen found at the crime scene with the hope that it would exculpate him from the trouble he is in. Unfortunately for petitioner, we have previously held that "the choice of what evidence to present, or who should testify as a witness is within the discretionary power of the prosecutor and definitely not of the courts to dictate." [26]

Anent the failure of the investigators to conduct a paraffin test on petitioner, this Court has time and again held that such failure is not fatal to the case of the prosecution as scientific experts agree that the paraffin test is extremely unreliable[27] and it is not conclusive as to an accused's complicity in the crime committed.[28]

Turning to the issue of the propriety of the award of moral damages and attorney's fees, petitioner insists that the Court of Appeals erred in sustaining these awards. Petitioner argues that the award of attorney's fees under Article 2208 of the Civil Code "demands factual, legal and equitable justification, without which the award is a conclusion without premise, its basis being improperly left to speculation and conjecture. In all events the court must explicitly state in the text of the decision, and not only in the decretal portion thereof, the legal reason for the award of the attorney's fees." [29]

In a criminal proceeding, an appeal throws the whole case open for review and it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.[30] We have reviewed the records of this case and determined that the trial court committed no error in awarding attorney's fees in favor of private complainants. Under Article 2208 (11) of the Civil Code, attorney's fees can be awarded where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In this case, it is only proper to sustain the award of attorney's fees considering that Daisy Gayutin, the victim's wife, testified that she hired the services of a private prosecutor.[31]

We likewise affirm the award of moral damages in view of the testimony of the victim's wife that she suffered sleepless nights and depression brought about by the death of her spouse.[32] Under Article 2206 (3) of the Civil Code, the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

WHEREFORE, premises considered, the petition is DENIED, and the Court of Appeals' decision dated 03 December 2002 in CA-G.R. CR No. 25237, affirming with modification the decision of the Regional Trial Court, Branch 49, Puerto Princesa City in Criminal Case No. 13438, is hereby AFFIRMED. With costs.

SO ORDERED.

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

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam, concurring; Rollo, pp. 17-26.

[2] Rollo, p. 27.

[3] Rollo, pp. 28-33.

[4] Rollo, pp. 18-21.

[5] Records, pp. 71-79.

[6] For violation of P.D. No. 1866 (Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes).

[7] Records, pp. 91-94.

[8] Rule 113, Section 5 of the Rules of Court states: Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

[9] Records, pp. 347-352. In the Decision of the Court of Appeals as well as in the copy of the decision attached to the instant petition for review on certiorari, the decision of the trial court is dated 15 January 2000.

[10] Id. at 352.

[11] Rollo, p. 25.

[12] Rollo, p. 10.

[13] Rollo, p. 100.

[14] *People of the Philippines v. Modesto, et al.*, No. L-25484, 21 September 1968, 25 SCRA 36; citation omitted.

- [15] Solomon Alavarez v. Court of Appeals, G.R. No. 141801, 25 June 2001, 359 SCRA 550.
- [16] Supra, note 14.
- [17] Id. at 41.
- [18] People of the Philippines v. Felicisimo Jara, et al., G.R. Nos. L-61356-57, 20 September 1986, 114 SCRA 539.
- [19] TSN, 02 August 2000, pp. 10-11.
- [20] TSN, 23 March 1998, p. 14.
- [21] Id. at 20.
- [22] TSN, 09 June 1998, p. 7.
- [23] TSN, 02 August 2000, p. 13.
- [24] Ibid.
- [25] TSN, 15 February 2000, p. 14.
- [26] Supra, note 15 at 553.
- [27] People of the Philippines v. Ricky Casanghay, et al., G.R. No. 143005, 14 November 2002, 391 SCRA 648.
- [28] People of the Philippines v. Ponciano Agcaoili, G.R. No. 92143, 26 February 1992, 206 SCRA 613.
- [29] Rollo, p. 14; citing National Steel Corporation v. RTC of Lanao del Norte, Br. 2, Iligan City, G.R. No. 127004, 11 March 1999, 304 SCRA 595; Pimentel v. Court of Appeals, G.R. No. 117422, 12 May 1999, 307 SCRA 38; Koa v. Court of Appeals, G.R. No. 84847, 05 March 1993, 219 SCRA 541; Central Azucarera de Bais v. Court of Appeals, G.R. No. 87597, 03 August 1990, 188 SCRA 328; and Mirasol v. Dela Cruz, et al., No. L-32552, 31 July 1978, 84 SCRA 337.
- [30] Jovito Cabuslay v. People of the Philippines and Sandiganbayan, G.R. No. 129875, 30 September 2005.
- [31] TSN, 10 August 1998, p. 5.
- [32] Id. at 3.

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