

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FERDINAND PASCUAL Y BAUTISTA, APPELLANT.

G.R. NO. 173309. January 23, 2007

Ponente: TINGA, J.

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TINGA, J.:

This is an appeal from the Decision[1] of the Court of Appeals dated March 24, 2006, affirming the decision[2] of the Regional Trial Court of Tayug, Pangasinan, Branch 51, which found appellant Ferdinand B. Pascual (Pascual) guilty of the crimes of Attempted Murder in Criminal Case No. T-2515 and Murder in Criminal Case No. T-2516, but modifying the civil aspect of the case and the sentence imposed in Criminal Case No. T-2515.

Pascual was charged with Frustrated Murder and Murder in two Informations dated August 8, 2000, which read as follows:

Criminal Case No. T-2515

That on or about the 15[th] day of April, 2000, in the evening, at Brgy. Flores, Municipality of Umingan, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a firearm, with treachery, did then and there wilfully, unlawfully and feloniously shoot one ADELAIDA PERLAOAN on the back of his (sic) body, the accused having thus performed all the acts of execution which would 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, that is, due to the timely and able medical assistance rendered to the offended party which prevented his (sic) death, to the damage and prejudice of said ADELAIDA PERLAOAN.[3]

Criminal Case No. T-2516

That on or about the 15th day of April, 2000, in the evening, at Brgy. Flores, Municipality of Umingan, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a firearm, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot thrice MANUEL PERLAOAN on his face which caused his death, to the damage and prejudice of the heirs of said MANUEL PERLAOAN.[4]

Pascual pleaded not guilty upon arraignment. Joint trial on the merits thereafter ensued.

The prosecution presented as witnesses Adelaida Perlaoan (Adelaida), Noel “Boy” Perlaoan and SPO1 Jeremias Fernandez (SPO1 Fernandez).

According to Adelaida, at about 11:00 o’clock in the evening of April 15, 2000, she was on the way home aboard a passenger jeepney driven by her husband, Manuel Perlaoan, the deceased victim in this case. As she and her young granddaughter were alighting from the jeepney, Adelaida heard two (2) successive gunshots. At the time she heard the sound of the first gunshot, she was helping her granddaughter get off the jeepney but got a glimpse of her husband lying face down on the steering wheel. She heard another gunshot and immediately took cover

embracing her granddaughter. She felt that she had also been hit by gunfire.[5]

A few seconds later, Adelaida stood up and saw Pascual walking away carrying a gun about two (2) feet long. She was then approximately seven (7) meters away from Pascual, whom she recognized because of the light coming from the jeepney's headlights and a street post. She cried out to her son, shouting that her husband was shot by Pascual. Her son came out of their house, embraced her and noticed that she was also hit because she had blood at her back. She lost consciousness but regained her bearings soon enough. She was thereafter taken to the Medicare Hospital in Umingan.[6]

Noel "Boy" Perlaoan testified that he was already in bed at about 11:00 o'clock in the evening of April 15, 2000 when he heard gunshots coming from outside their house followed by his mother shouting that his father had been shot by Pascual.[7] He immediately went out of the house and saw his mother on the right side of the vehicle. He also saw his father lying face down on the steering wheel with his head smashed. He turned off the jeepney's engine and headed for his uncle's house, which was two (2) houses away from theirs, to tell his uncle that his father had been shot. He returned to his mother and daughter and, with his uncle's help, hailed a jeep to take his mother to the hospital.[8] Policemen arrived about an hour later and conducted an investigation.[9]

SPO1 Fernandez testified that he was on duty on April 15, 2000 and received a report that there was a shooting incident in Brgy. Flores, Umingan, Pangasinan. Together with three (3) other policemen, he went to the crime scene to conduct an investigation. He noticed that Adelaida was wounded. Nonetheless, Adelaida told him that she saw Pascual shoot her husband and then flee.[10]

The policemen immediately proceeded to Pascual's house but was told by the latter's wife that Pascual left their house just after dinner and might visit his brother in Brgy. Lapaz, Umingan, Pangasinan. Having received this information, they went to Brgy. Lapaz but failed to find Pascual. The policemen decided to put up a checkpoint in Balungao but still failed to locate Pascual. They returned to Pascual's house only to be told by the latter's brother that a tricycle arrived at dawn to fetch Pascual's wife.[11]

They later received a report that Pascual was residing somewhere in Quezon Province. Pascual was apprehended by virtue of a previously issued warrant of arrest which was forwarded to Lucena City.[12]

The defense presented Pascual as sole witness. According to Pascual, on August 15, 2000, he was at his wife's house in Ibabang Dupay, Red V, Lucena City with his brother-in-law, sister-in-law and three (3) children.[13] He claimed that he has lived in Lucena City since he was released from prison in 1995.[14]

The trial court rendered judgment finding Pascual guilty of Attempted Murder in Criminal Case No. T-2515 and Murder in Criminal Case No. T-2516. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court hereby sentences the accused to suffer:

- Under Crim. Case No. T-2515, and applying the pertinent provisions of Act 4103, the penalty of from six (6) years of prision correctional maximum as MINIMUM, to ten (10) years of prision mayor medium as MAXIMUM; and,

- Under Crim. Case No. T-2516, the penalty of RECLUSION PERPETUA.

Moreover, and as stipulated, the accused is hereby ordered to pay to private complainant Adelaida Perlaoan the amount of P5,000.00 as civil liability in Crim. Case No. T-2515, and to the heirs of the late Manuel Perlaoan, the amount of P200,000.00 as civil liability in Crim. Case No. T-2516.

Costs are likewise for his account.

SO ORDERED.[15]

The case was elevated on appeal to this Court. However, pursuant to our ruling in *People v. Mateo*,^[16] the case was transferred to the Court of Appeals, which rendered the assailed decision affirming with modification the judgment of the trial court thus:

WHEREFORE, in the light of the foregoing disquisitions, the decision of the Regional Trial Court of Tayug, Pangasinan, Branch 51, in Criminal Case Nos. T-2515 and T-2516 finding appellant Ferdinand B. Pascual guilty beyond reasonable doubt of the crimes of Attempted Murder and Murder, respectively, are hereby AFFIRMED. In Criminal Case No T-2515, however, appellant's sentence is MODIFIED. His sentence is reduced to Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to eight (8) years and One (1) day of prision mayor, as maximum.

The civil aspect of the case is MODIFIED to read: Appellant is ordered to pay the heirs of Manuel Perlaoan the amount of P25,000.00 as exemplary damages. The award of civil indemnity in the amount of P200,000.00 is reduced to P50,000.00. We affirm in all other respects.

SO ORDERED.^[17]

In his Brief,^[18] Pascual stakes his appeal on the assertion that his identity as the offender has not been established by sufficient evidence. He contends that Adelaida herself admitted that she did not see Pascual actually fire shots at her and her husband.

The Court of Appeals and the trial court accorded full faith and credence to the testimony of Adelaida who described with reasonable certainty the fact of the killing, as well as identified Pascual as the assailant. It is doctrinal that the trial court's evaluation of the credibility of a witness and his testimony is accorded the highest respect because of the latter's untrammelled opportunity to observe directly the demeanor of a witness and thus, to determine whether he is telling the truth.^[19]

In this case, Adelaida gave a straightforward, unequivocal and spontaneous testimony that she saw Pascual holding a long shotgun walking away rather hurriedly a few seconds after she heard the gunshots that killed her husband and wounded her. The following excerpts from her testimony inspire belief:

PROS. BINCE:

x x x x

Q When you took cover behind the jeep, what else happened?

A After around three seconds[,] I stood up and I felt nervous, sir.

Q When you stood up what did you notice, if any?

A I saw the person walking, sir.

Q Who was that person you noticed walking?

A Ferdinand Pascual alyas "Utak", sir.

Q This Ferdinand Pascual @ Utak whom you noticed walking, is this the same Ferdinand Pascual, [who was the] accused in this case?

A Yes, sir.

Q Where was Ferdinand Pascual when you noticed him walking?

A Going north, sir.

Q What did you notice from "Utak" when you noticed him proceeding north?

ATTY. STA. MARIA:

It presupposes that he was holding something?

WITNESS:

A I saw him carrying a gun in his hand, sir.

Q Did you notice what kind of gun was being held by the accused?

A About two feet long, sir.

Q And where was the accused when you first noticed him carrying a gun when you noticed him?

A He was only seven meters away from me when I noticed him, sir.

COURT:

Q Was he walking away from you when you noticed him?

A He was walking away, sir.

PROS. BINCE:

Q What did you do, if you did anything, when you saw him walking away?

A I shouted, sir.

Q What were the words you shouted?

A I cried out "Boy, Boy, your father was shot by "Utak."

Q Who was this Boy you are shouting?

A My son who was inside the house and maybe still asleep, sir.

Q Do you know how far was the accused when you started shouting?

A He was about 5-7 meters away.[20]

Adelaida further stated:

PROS. BINCE:

Q The last time you testified in court that after the shooting the accused walked towards the north. When you noticed the accused walking towards the north direction, what was his appearance?

A He was then in a long jacket (witness pointing up to the middle of her legs) and he was then walking towards north with a gun on his hand.

Q Will you please describe that gun holding [sic] by Utak when he was walking towards the north direction?

A The gun was about 2 feet long, sir.

Q Did you notice the color of that gun?

A No, sir.

Q How did Utak carry that gun?

A He was holding it with his hand dangly [sic], sir.

COURT:

Q His forearm was down?

A Yes, sir.

PROS. BINCE:

Q The incident happened during night time, to be exact at eleven o'clock in the evening of April 15, 2000.

How sure are you that the one holding a gun was the accused Utak?

A I recognized [him] because the lights of the jeep were then on and besides there was a street light in front of our house, sir.

Q Where was the headlight of your vehicle facing when you allegedly saw the accused walking north?

A Towards north, sir.

COURT:

Q Your jeep was still moving when according to you the headlights were on when you saw the accused walking?

A No more, sir.

Q It was station[ary yet the headlight[s] were on. Is that what you are saying?

A Yes, sir.

PROS. BINCE:

Q That electric post which you claimed to have light, how far was that from your vehicle?

A It was only two (2) meters away, sir.

COURT:

Q Two meters away from whom? From you or from the accused?

A From the vehicle, sir.

Q Behind, in front or on the sides?

A On the sides, sir.

Q Right of the jeep?

A Yes, sir.[21]

We, therefore, cannot subscribe to Pascual's argument that he was not positively identified as the assailant because Adelaida did not actually see him pull the trigger.

In *People v. Raquiño*,^[22] the accused-appellant contended that he could not have been positively identified by the victim's son because the latter admitted not having seen the actual shooting incident but only the fleeing of three armed individuals. The Court disagreed with his contention explaining that positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime, as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.

In this case, Adelaida was unwavering in her testimony that she saw Pascual at the crime scene and that she could not have been mistaken in identifying Pascual as the assailant because the latter is very familiar to her. She convincingly recounted that she was able to recognize Pascual although he was walking away from her because she is familiar with his distinct gait, describing it as that of a drunken man.^[23] We are, thus, convinced that with the help of the jeepney's headlights and the light from the street lamp in front of the house of the Perlaoans, Adelaida was able to clearly catch sight of and recognize Pascual, her neighbor of many years, as the assailant.

It is also important to emphasize that Adelaida immediately called out to her son that her husband was shot by Pascual and afterward narrated the incident to the police again identifying Pascual as the assailant. These circumstances, as the trial court correctly reckoned, are part of the *res gestae*, having been made by Adelaida immediately subsequent to the shooting.^[24]

We agree with the Court of Appeals that there is no evidence in this case which tends to discredit Adelaida's testimony. Pascual failed to establish or even ascribe to her any motive that would move Adelaida to falsely incriminate him. The fact that Manuel Perlaoan charged Pascual with frustrated homicide in 1995 and caused the latter's incarceration does not necessarily indicate ill-motive on the part of Adelaida. As correctly held by the Court of Appeals, Pascual's conviction and subsequent imprisonment were enough vindication for the Perlaoans.

Pascual's defense of denial and alibi, supported by nothing but his say-so, is futile in the light of Adelaida's positive identification of him as the assailant. Denial and alibi are inherently weak defenses which should be buttressed by other convincing evidence of non-culpability to merit credibility.[25]

Both the trial court and the Court of Appeals rejected Pascual's allegation that after he was released from prison on May 14, 1995, he had never again set foot in Brgy. Flores, Umingan, Pangasinan. As the trial court held:

The Court is unmoved by the accused's intransigent stance that on the night of the incident in question he was harmlessly distant from the crime site, as he was allegedly in his wife's house at Lucena City with their two children and her relatives Rodolfo and Virginia Colambo. None of them was presented on the witness stand to corroborate his alibi, however,

He repeatedly told the Court that from the date he walked free from incarceration on May 14, 1995 he proceeded straight home to Lucena City, and there he stayed until the local police took him into custody pursuant to the then pending arrest warrants issued by this Court, one of which had to do with Criminal Case No. T-1820 for "frustrated homicide."

The Court takes official cognizance of said case, wherein the same Ferdinand Pascual alias "Utak" has likewise stood trial before it for a stabbing incident that transpired on December 17, 1995 at Brgy. Flores, Umingan, also with the very same Manuel Perlaoan as the complainant. On the witness stand the accused invoked self-defense, thereby necessarily admitting his physical presence at the locus crimen. So, how does his availment of the first paragraph of Article 11 of the Revised Penal Code harmonize with his allegation that beginning May 14, 1995 he lived continuously in Lucena City and never returned to his native town of Umingan?[26]

We also note that as SPO1 Fernandez testified, Pascual's wife and brother told him that Pascual left their house just after dinner on April 15, 2000. It could not have been true then that Pascual was in Lucena City that night. Further, SPO1 Fernandez also testified that when he and the other policemen returned to Pascual's house, the latter's brother informed them that Pascual's wife was fetched by a tricycle at dawn. The fact that Pascual's whereabouts that night could not be accounted for and the police failed to find him despite extensive search, coupled by the surreptitious departure of his wife, is an additional indication of guilt.[27]

It should be stressed that it was only in December 2000, or about eight (8) months from the time the crime was committed on April 15, 2000, that policemen received a report that Pascual was arrested somewhere in Quezon Province.[28] Pascual must have known from his wife and brother that the police were looking for him on account of the killing of Manuel Perlaoan. Despite this, he did not communicate to the authorities whatever information he had which might shed light on the case, choosing instead to hole up in Lucena City. His conduct after the incident, particularly his resort to flight, strongly indicates guilt.[29]

Given the circumstances surrounding the attack on the Perlaoans, we agree with the trial court and the appellate court that treachery attended the attack. Treachery is present when the offender commits any crime against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to the offender arising from any defense which the offended party might make.[30]

In this case, the trial court correctly appreciated the qualifying circumstance of treachery that attended the killing

of Manuel Perlaoan and the wounding of Adelaida. Two conditions must concur for treachery to exist: (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[31]

Adelaida vividly recalled that that night, she and her husband were just about to get off from their passenger jeepney when two gunshots suddenly reverberated in the air. They had absolutely no inkling of the attack. They had no opportunity to anticipate the imminence thereof the attack nor were they in any position to defend themselves or repel the aggression because they were unarmed. Manuel Perlaoan was fatally shot in the head which instantly caused his death. The execution of the attack, without the slightest provocation from the victims who were unarmed, made it impossible for the latter to defend themselves or to retaliate.[32]

As regards the qualifying circumstance of evident premeditation, we find that the prosecution failed to adduce evidence to prove the elements thereof, including: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.[33]

We do not agree with the contention of the Office of the Solicitor General in its Brief dated April 2, 2003,[34] that Pascual should have been convicted of Frustrated Murder in Criminal Case No. T-2515. Both the trial court and the Court of Appeals had already determined Pascual's criminal liability only for Attempted Murder. His conviction of Attempted Murder effectively operates as an acquittal from the graver offense of Frustrated Murder. The rule on double jeopardy prohibits the State from appealing or filing a petition for review of a judgment of acquittal based on the merits of the case.[35]

At any rate, the doctrinal rule is that where the wound inflicted on the victim is not life threatening, the accused not having performed all the acts of execution that would have brought about death, the crime committed is only attempted murder.[36] In this case, the wound inflicted on Adelaida was not the kind which could have caused her death as, in fact, she was confined at the Medicare Hospital for only one (1) day. Pascual was thus properly convicted only of Attempted Murder in Criminal Case No. T-2515.

The Court of Appeals correctly assessed the penalty to be imposed upon Pascual for Attempted Murder in Criminal Case No. T-2515. Attempted Murder is punishable with the penalty two degrees lower than that prescribed for the consummated felony under Article 51 of the Revised Penal Code. Accordingly, the imposable penalty is prision mayor. Absent any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be within the range of prision correccional, and the maximum of the penalty to be imposed should be within the range of prision mayor in its medium period. Hence, for the crime of Attempted Murder, Pascual should be sentenced to suffer the penalty of imprisonment of Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum.

As regards the issue of damages, the award of P50,000.00 as civil indemnity ex delicto in favor of Manuel Perlaoan's heirs is proper. This award is mandatory and requires no proof other than the victim's death.[37] We also award to Manuel Perlaoan's heirs exemplary damages in the amount of P25,000.00 in accordance with Art. 2230 of the Civil Code. Further, based on the agreement of the parties in the Order[38] of the trial court dated August 21, 2001, the amount of P5,000.00 shall suffice to answer for indemnification in the event of a judgment of conviction in Criminal Case No. T-2515.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated March 24, 2006, affirming the decision of the Regional Trial Court of Tayug, Pangasinan, Branch 51, in Criminal Case Nos. T-2515 and

T-2516, finding Ferdinand B. Pascual guilty beyond reasonable doubt of the crimes of Attempted Murder in Criminal Case No. T-2515 and Murder in Criminal Case No. T-2516, is hereby AFFIRMED.

In Criminal Case No. T-2515, Ferdinand B. Pascual is sentenced to suffer the indeterminate penalty of imprisonment ranging from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum. He is likewise ordered to pay private complainant Adelaida Perlaoan the amount of P5,000.00 as damages.

In Criminal Case No. T-2516, Ferdinand B. Pascual is sentenced to suffer the penalty of RECLUSION PERPETUA and is adjudged to indemnify the heirs of the deceased, Manuel Perlaoan, the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity ex delicto and Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 3-23; Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Noel G. Tijam and Arturo G. Tayag.

[2] CA rollo, pp. 25-37.

[3] Records, Vol. 1, p. 1.

[4] Records, Vol. 2, p. 1.

[5] TSN, March 5, 2001, pp. 6-11.

[6] TSN, March 12, 2001, pp. 3-5; TSN, March 19, 2001, pp. 3-6.

[7] TSN, July 9, 2001, pp. 3-4.

[8] TSN, July 10, 2001, pp. 2-3.

[9] Id. at 4.

[10] TSN, August 14, 2001, pp. 3-4.

[11] Id. at 5-6.

[12] Id. at 7.

[13] TSN, September 4, 2001, p. 3.

[14] TSN, September 11, 2001, p. 4.

[15] CA rollo, pp. 36-37.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] Rollo, pp. 22-23.

[18] CA rollo, pp. 25-35.

[19] People v. Colonia, 451 Phil. 856 (2003).

- [20]TSN, March 12, 2001, pp. 3-4.
- [21]TSN, March 19, 2001, pp. 3-4.
- [22]374 Phil. 283 (1999).
- [23]TSN, July 3, 2001, p. 8.
- [24]Rules of Court, Rule 130, Sec. 42.
- [25]People v. Albacin, 394 Phil. 565, 582 (2000).
- [26]CA rollo, p. 35, RTC Decision.
- [27]People v. Roma, G.R. No. 147996, September 30, 2005, 471 SCRA 413.
- [28]CA rollo, RTC Decision dated January 17, 2002.
- [29]Militante v. People, G.R. No. 150607, November 26, 2004, 444 SCRA 465.
- [30]People v. Patoc, 446 Phil. 86, 100 (2003).
- [31]People v. Dela Cruz, G.R. Nos. 154348-50, June 8, 2004, 431 SCRA 388.
- [32]People v. Patoc, *supra*.
- [33]People v. Calago, 431 Phil. 168, 183 (2002).
- [34]CA rollo, pp. 55-84.
- [35]People v. Court of Appeals, 386 Phil. 169 (1990).
- [36]People v. Albacin, 394 Phil. 365 (2000).
- [37]People v. Dela Cruz, *supra* note 31.
- [38]CA rollo, p. 27; RTC Decision dated January 17, 2002.

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