

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD T. AGCANAS, ACCUSED-APPELLANT.

G.R. No. 174476. October 11, 2011

Ponente: SERENO, J.

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SERENO, J.:

For the automatic review of this Court is the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00845 convicting the accused of murder and sentencing him to suffer the penalty of death and to pay damages.

The antecedent facts are as follows:

On 8 May 2000, the provincial prosecutor of Laoag City charged the accused with murder in the Regional Trial Court (RTC), Branch 16, Laoag City, under the following Information:[2]

That on or about 9:00 o'clock in the evening of May 4, 2000 at Brgy. Root, Dingras, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with evident premeditation, with treachery and nighttime (sic) having been purposely sought and inside a dwelling, did then and there willfully (sic), unlawfully and feloniously shoot WARLITO RAGUIRAG with an illegally possessed firearm of yet unknown calibre, inflicting upon the latter fatal gunshot wounds which caused the death of said WARLITO RAGUIRAG immediately thereafter.

CONTRARY TO LAW.

NO BAIL RECOMMENDED.

Upon arraignment, the accused pleaded not guilty. Thereafter, trial ensued.

The trial court found that on 4 May 2000, at about nine o'clock in the evening while the victim Warlito Raguirag was having dinner at home, herein accused Arnold Agcanas entered the former's house through the kitchen door. The accused pointed a gun at the back of the left ear of the victim and shot him point-blank. Beatriz Raguirag, the victim's wife, shouted, "We were invaded [sinerrek] by Arnold Agcanas." [3] Under the 50-watt light bulb and with only a meter between them, the wife was able to identify the accused, who was the son of her cousin.

Around 9:15 in the evening, Senior Police Officer (SPO) 1 Jessie Malvar, SPO4 Bonifacio Valenciano, SPO1 Marlon Juni and Police Officer (PO) 2 Ramil P. Belong arrived at the scene of the crime and were informed by Beatriz Raguirag that Arnold Agcanas was the assailant. The police were also informed by several people that the accused had a relative in Barangay Naiporta, Sarrat, Ilocos Norte. Thereafter, around ten o'clock in the evening, the police found the accused in the house of his brother, Alejandro Agcanas, who was actually residing in Barangay San Miguel, Sarrat, Ilocos Norte. The accused then went willingly with the police officers to the police station.

The trial court further found that the crime was aggravated by the qualifying circumstance of dwelling, given that the crime was committed in the kitchen of the house of the victim. Finally, it held that the accused shot the victim

with an illegally possessed firearm, although it was not presented as evidence. It did not, however, find the crime attended by the aggravating circumstances of evident premeditation and nighttime, there being no evidence presented to prove these two.

Thus, on 30 September 2004, the trial court found the accused guilty beyond reasonable doubt of the crime of murder, qualified by treachery and attended by the aggravating circumstances of dwelling and the use of an illegally possessed firearm. The dispositive portion of the Decision states:

WHEREFORE, PREMISES CONSIDERED, the prosecution was able to prove the guilt of the accused ARNOLD AGCANAS beyond reasonable doubt of the crime of Murder qualified by treachery. With the same quantum of evidence, the aggravating circumstance (sic) of dwelling and the use of an illegally possessed firearm were duly established. No mitigating circumstance is accorded to the accused. Hence, the maximum penalty of DEATH is hereby imposed upon him with all its accessory penalties. Likewise, he is ordered to pay the widow of the victim WARLITO RAGUIRAG Seventy Five Thousand Pesos (P75,000.00) as civil indemnity; Fifty Thousand (P50,000.00) as moral damages; Fifty Thousand Pesos (P50,000.00) as exemplary damages and the costs.

SO ORDERED.[4]

On intermediate appellate review by the Court of Appeals, the conviction was affirmed. However, the award of damages was modified based on prevailing jurisprudence. The dispositive portion states:

WHEREFORE, premises considered, the appealed decision finding the accused-appellant guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the supreme penalty of DEATH is hereby AFFIRMED with the MODIFICATIONS as to damages.

The accused-appellant is ordered to pay the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00), as moral damages, and Twenty Five Thousand Pesos (P25,000.00), as exemplary damages.

In accordance with A.M. No. 00-5-03-SC which took effect on October 15, 2004, amending Section 13, Rule 124 of the Revised Rules of Criminal Procedure, let the entire records of this case be elevated to the Supreme Court for review.

Costs de oficio.

SO ORDERED.

Accused-appellant assigns the following errors for this Court's automatic review:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT WAS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II.

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS LIABLE FOR THE DEATH OF THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN FINDING HIM GUILTY OF MURDER INSTEAD OF HOMICIDE ONLY.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE CRIME WAS AGGRAVATED BY THE CIRCUMSTANCES OF DWELLING AND ILLEGAL POSSESSION OF FIREARM.

After a judicious review of the records, the Court finds no cogent reason to overturn the findings of the trial court.

This Court has held in a number of cases that denial and alibi are weak defenses, which cannot prevail against positive identification.[5] *People v. Caisip*[6] thus held:

Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

Beatriz Raguirag positively identified the accused as the one who had shot her husband. She was firm and consistent throughout her testimony. This Court does not see any ill motive on her part in testifying against her own relative regarding the death of her husband. Thus, there is no reason to question her credibility as a witness.

On the other hand, the accused miserably failed to satisfy the requirements for an alibi to be considered plausible. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the locus criminis at the time of the alleged crime.[7]

The accused testified that he was attending the birthday celebration of his brother, Alejandro Agcanas, at the time of the incident. However, the trial court pointed out several inconsistencies in the testimony of the accused.

First, while he testified that the birthday celebration of Alejandro was on 4 May 2000, the latter was actually born on 22 July 1950. The accused also testified that the celebration ended around midnight, but Alejandro testified that the former left the house between 9:30 p.m. and 10:00 p.m. after the party. Meanwhile, the arresting officers said that upon reaching the house of Alejandro Agcanas, the lights were off and there was no celebration going on. The trial court further reasoned that the house of Alejandro Agcanas was only 45 minutes away from the scene of the crime; therefore, it was not physically impossible for him to travel from the victim's house to Alejandro Agcanas' house where he was arrested by the police officers. Finally, another witness, Liwliwa Agcanas, a relative of the accused by affinity, likewise testified that her house was twenty (20) meters away from the victim's house. On the night of the shooting incident, around nine o'clock, she saw the accused drinking with some others five meters from where she stood in front of her house.

Thus, the trial court correctly ruled that the alibi of the accused deserved scant consideration.

The accused additionally alleges that his right to counsel was violated when, on the morning of 5 May 2000, he made an admission without his lawyer that he had shot the victim. While it is true that an admission made by the accused without counsel is violative of due process and is therefore inadmissible, it must be noted that the findings of the trial court in this case were not based on the 5 May 2000 admission. The issue, therefore, is irrelevant to this case, since the trial court did not take the admission as evidence against the accused.

Anent the second assigned error, the Court likewise finds that there was treachery in the commission of the crime.

In *People v. Dela Cruz*,[8] this Court reiterated:

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.

The victim was then eating his dinner, seated with his back to the kitchen door. Suddenly, without provocation or reason, the accused entered through that door and shot the victim in the head, causing the latter's instantaneous death. With the suddenness of the attack, the victim could not do anything, except turn his head towards the accused. The testimony of Beatriz Raguirag is revealing:

Fiscal Molina:

Q: You said Madam Witness in the last hearing that (that) was the time Arnold Agcanas entered(.) (W)hat portion of your house did Arnold Agcanas enter?

A: In (sic) the kitchen, sir.

Q: In what part (sic) of the kitchen did Arnold Agcanas enter?

A: At (sic) the door, sir.

Q: When you saw Arnold Agcanas enter, what happened next?

A: He immediately shoot (sic) Warlito Raguirag, sir.

Q: What was the place where Arnold Agcanas placed himself when he shoot (sic) your husband in relation to your husband?

A: At the back of my husband, sir.

...

Q: From the time you saw Arnold Agcanas enter the door of the kitchen up to the time he actually shoot (sic) your husband how long was it?

A: When he entered the kitchen he immediately shoot (sic) my husband and left hurriedly, sir.

Q: What part of your house did he exit?

A: (Through) [t]he door of the kitchen, where he entered, sir.[9]

Moreover, the accused was the nephew of the victim's wife; thus, an attack from a relative right in their own home was unexpected. Since the accused was not a stranger to the spouses, the wife did not immediately demand that he leave as soon as she saw him enter the kitchen.

The trial court was also correct in ruling that dwelling was an aggravating circumstance. It has been held in a long line of cases that dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[10]

The aggravating circumstance of illegal possession of firearm was likewise properly appreciated, even though the firearm used was not recovered. As this Court held in *People v. Taguba*,[11] the actual firearm itself need not be presented if its existence can be proved by the testimonies of witnesses or by other evidence presented. In the case at bar, Beatriz Raguirag testified that she saw the accused holding a gun and then heard a gunshot. The post-mortem examination also showed that the accused died of a gunshot wound. Thus, the presentation of the actual firearm was not indispensable to prove its existence and use.

Second, during pre-trial the accused admitted that he was not a licensed firearm holder. As this Court stated in *Del Rosario v. People of the Philippines*: [12]

In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements

thereof, viz.: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm. Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt... (Emphasis supplied.)

The judgment of the trial court must, however, be modified. On 24 June 2006, Republic Act No. 9346 (RA 9346) abolished the death penalty. Thus, pursuant to Section 2(a) of RA 9346, the accused shall instead suffer the penalty of reclusion perpetua.

WHEREFORE, in view of the foregoing, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00845 finding the accused guilty beyond reasonable doubt of the crime of murder is hereby **AFFIRMED**. By virtue of RA 9346, the penalty is **MODIFIED**, and the accused is hereby sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole. Based on prevailing jurisprudence, the award of damages is likewise **MODIFIED**. The accused is ordered to pay P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages to the heirs of Warlito Raguirag.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Abad, Villarama, Jr., Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Peralta, J., no part.

Bersamin and Perez, JJ., on official leave.

Del Castillo, J., on sick leave.

[1] Rollo, pp. 3-16. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Fernanda Lampas Peralta and Vicente S.E. Veloso, concurring and dated 26 May 2006.

[2] CA rollo, pp. 9-10.

[3] TSN, 29 June 2001, p. 3.

[4] CA rollo, pp. 21-27.

[5] *People v. Mapalo*, G.R. No. 172608, 6 February 2007, 514 SCRA 689; *People v. Caraang*, 463 Phil. 715; *People v. Caisip*, 352 Phil. 1058.

[6] 352 Phil. 1058, 1065.

[7] *People v. Malones*, 469 Phil. 301; *People v. Libo-on*, 410 Phil. 378; *People v. Marquez*, 400 Phil. 1313.

[8] *People v. Dela Cruz*, G.R. No. 188353, 16 February 2010, 612 SCRA 738.

[9] TSN, May 23, 2001, pp. 2-3.

[10] *People v. Montesa*, G.R. No. 181899, 27 November 2008, 572 SCRA 317; *People v. Daniela*, 449 Phil. 547; *People v. Molina*, 370 Phil. 546.

[11] 396 Phil. 366.

[12] 410 Phil. 642, 659.

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