

JEROME FLORES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 181625. October 02, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed is the January 16, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR No. 00327 which affirmed the September 14, 2005 Joint Decision[2] of the Regional Trial Court of Antique, Branch 64 finding Jerome Flores, Mike Tuason, and Bobette Nicolas guilty of frustrated homicide.

In August 2001, petitioner Jerome Flores (Flores), together with Mike Tuason (Tuason), Bobette Nicolas (Nicolas), and Jerose Absalon (Absalon), were charged with two counts of frustrated homicide docketed as Criminal Case Nos. 0489 and 0515. In Criminal Case No. 0515, Tuason was convicted while Flores and Nicolas were acquitted for insufficiency of evidence. In Criminal Case No. 0489, Tuason, Flores, and Nicolas were convicted. Absalon remained at large.

The Information in Criminal Case No. 0489[3] reads as follows:

The undersigned Assistant Provincial Prosecutor accuses Jerome Flores, Mike Tuason, Alias Bobit Nicolas and Jerose Absalon of the crime of Frustrated Murder, committed as follows:

That on or about the 19[th] day of February, 2001, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an unlicensed firearm, conspiring, confederating and mutually helping one another and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot with said unlicensed firearm one Ronald B. Lim, thereby inflicting upon the latter the following wound, to wit:

"Gunshot wound 4l ICS left parasternal area (Intrance) exit at right shoulder with pulmonary contusion and hemothorax."

thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which, nevertheless did not produce it by reason of causes independent of the will of the said accused, that is by the timely medical attendance rendered to the said Ronald B. Lim which prevented his death.

With the qualifying circumstance of treachery.

Contrary to the provisions of Article 248 of the Revised Penal Code in relation to Article 6 of the same code.

while the Information in Criminal Case No. 0515[4] states:

The undersigned Assistant Provincial Prosecutor accuses Jerome Flores, Mike Tuason, Alias Bobit Nicolas and Jerose Absalon of the crime of Frustrated Murder, committed as follows:

That on or about the 19th day of February, 2001, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then

armed with an unlicensed firearm, with intent to kill, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one William Sareno, thereby inflicting upon the latter the following wound, to wit:
"GSW Right hip, Open Fracture Right Femoral Head"

thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which, nevertheless did not produce it by reason of causes independent of the will of the said accused, that is by the timely medical attendance rendered to the said William Sareno which prevented his death.

With the qualifying circumstance of treachery.

Contrary to the provisions of Article 248 of the Revised Penal Code in relation to Article 6 of the same code.

Flores, Tuason, and Nicolas pleaded not guilty to both charges.

According to the prosecution, at around 8:30 in the evening of February 19, 2001, Ronald B. Lim (Lim), who was inside his office at the Petron gasoline station which also served as his house, heard a noise coming from outside. He then woke up his helper, William Sareno (Sareno), and requested the latter to accompany him outside to check the stocks and to inspect the premises. When they reached the left side of the gasoline station, they were alarmed to see four persons emerging from the nearby clump of banana plants. Due to proximity, as well as the light coming from six fluorescent lamps lighting the gasoline station, they were able to identify these persons as Flores, Tuason, Nicolas, and Absalon. Lim and Sareno are familiar with all the accused as Flores is the first cousin of Lim's wife, while Tuason, Nicolas, and Absalon are all residents of Tibiao.

Upon seeing the four accused who were holding short firearms, Sareno attempted to run away, but Tuason fired at him. Sareno was hit in his right hip, but he managed to escape. Lim, who could not run, being a polio victim, was shot by Flores in the left chest. Lim fell face down and pretended to be dead. The four accused surrounded him, and he heard Nicolas utter, "Be sure that he is dead." Nicolas kicked him, but he continued to play dead. While in that position, he saw Tuason take the P7,000 income of the gasoline station from his pocket, as well as his necklace. The four accused then fled.

Lim testified that before the February 19, 2001 incident, there was already strained relations between him and petitioner's Flores' family. According to Lim, aside from himself, two other persons applied for the franchise of a Petron gasoline station in Tibiao, and one of them was the father of petitioner. When the franchise was granted to Lim, the Flores family wanted to join Lim in his business, but Lim turned down the proposal.

The defense alleged that petitioner had nothing to do with the incident. Petitioner testified that at about 5:00 in the afternoon of February 19, 2001, he was at Carolina Store drinking beer with friends as it was the eve of the town fiesta. Such meeting was pre-arranged. Their group stayed inside the store for it was raining, and at no instance did any of them leave. They stayed at the store until 11:00 in the evening. At about 8:30 in the evening, they heard two firearm explosions, but they just continued drinking. The storekeeper of Carolina Store, Nelly Espartero, corroborated Flores' alibi.

Petitioner also denied the alleged strained relations between his father and Lim. In fact, he claims that he and his family even purchase gasoline from Lim's gasoline station.

On September 14, 2005, the trial court rendered its Joint Decision convicting Tuason in Criminal Case No. 0515 for frustrated homicide, and convicting Tuason, Flores, and Nicolas in Criminal Case No. 0489 also for frustrated homicide. The dispositive portion of the Joint Decision reads:

In View Thereof, this court renders the following judgment:

In Criminal Case No. 0515, this court finds the accused Mike Tuazon guilty beyond reasonable doubt for

Frustrated Homicide and in the absence of any aggravating and mitigating circumstances, he is hereby sentenced to an indeterminate imprisonment of 4 years and 2 months of prison correctional as minimum to 8 years, 8 months and 1 day of prison mayor as maximum.

For failure of the prosecution to prove the guilt of the accused Jerome Flores and Bobette Nicolas, they are acquitted.

Accused Mike Tuazon is directed to indemnify William Sareno in the amount of P30,000.00 as civil indemnity.

In Criminal Case No. 0489, this court finds the accused Jerome Flores, Mike Tuazon and Bobette Nicolas guilty beyond reasonable doubt for Frustrated Homicide in conspiracy with each other and in the absence of any aggravating and mitigating circumstances, they are each sentenced to an indeterminate imprisonment of 4 years and 2 months of prison correctional as minimum to 8 years, 8 months and 1 day of prison mayor as maximum.

All accused are ordered to pay, jointly and severally Ronald Lim the amount of P30,000.00 as civil indemnity and P72,397.05 for hospital and medical expenses.

The bailbonds posted by the accused Mike Tuazon and Jerome Flores are cancelled and they are committed together with accused Bobette Nicolas to the National Penitentiary, Muntinlupa City.

The case against Jerose Absalon is sent to the archive and issue an Alias Warrant for his Arrest. [[5]]

The case was brought to the Court of Appeals. On January 16, 2008, the appellate court rendered its Decision affirming in toto the trial court, to wit:

WHEREFORE, premises considered, the appealed Decision dated September 14, 2005 of the Regional Trial Court (RTC), 6th Judicial Region, Branch 64, in Bugasong, Antique in criminal case nos. 0489 and 0515, is AFFIRMED IN TOTO.

SO ORDERED. [[6]]

Hence, the instant petition for review raising the following issues: [[7]]

I.

THE APPELLATE COURT ERRED WHEN IT MISAPPREHENDED THE ARGUMENT OF THE ACCUSED THAT THE REPORT OF SARENO TO THE POLICE OFFICERS OF TIBIAO P.N.P. SHOULD BE CONSIDERED AS RES GESTAE AND INTERPRETED IT THAT IT REFERS TO THE TESTIMONY OF SPO2 MAGABILIN.

II.

THE APPELLATE COURT ERRED IN NOT APPLYING THE JURISPRUDENTIAL RULE THAT WHEN AN ISSUE ADMITS OF

TWO INTERPRETATIONS, ONE INCULPATORY AND THE OTHER EXCULPATORY, THE LATTER SHOULD BE PREFERRED IN DEFERENCE TO THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

III.

THE COURT A QUO ERRED WHEN IT FAILED TO FOLLOW THE TIME HONORED PRINCIPLE THAT THE STATEMENTS/ TESTIMONIES OF THE POLICE OFFICERS CARRY WITH IT THE PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL DUTIES.

The petition lacks merit.

Petitioner heavily relies on the police blotter entry dated February 19, 2001 of the Tibiao Police Station, which reads:

192055H February 2001 - On this date and time one WILLIAM SARENO y Miguel, 16 yrs old, student and a resident of Sitio Durog Brgy Importante, Tibiao, Antique, arrived (sic) this station on board a tricycle with gunshot wound on his right hip and alleged that OOA 192045H February 2001 at the gasoline station along national highway Poblacion Tibiao, Antique, there was a noise heard by them while they were inside the said gasoline station, thus prompting them to verify outside, when verified they saw a man crawling and hiding himself so Ronald Lim fired a warning shot to identify the said person however the said person shot William Sareño hitting him on his right hip breast. Both victims were brought by Tibiao Ambulane to the hospital for treatment.

Said police blotter entry was verified by SPO2 Vinancio Magabilin (SP02 Magabilin), who testified that he was the one who made the February 19, 2001 police blotter entry; that it was William Sareño who reported such incident to him; and that he recorded the incident exactly as narrated to him by Sareño.

Petitioner avers that as reported in the police blotter, Sareño did not know the identity of their assailants.[8] Sareño reported that there was only one assailant who was unidentified, and that when they went out to investigate, he and Lim saw only one person who was crawling and trying to hide behind the banana plants. Lim then fired a warning shot but said intruder shot Sareño and Lim.

Petitioner argues that said report made by Sareño to SP02 Magabilin is in the nature of *res gestae* and should be given substantial weight, to wit:

The report made to him by Sareño is in the nature of *res gestae* because his declarations were made immediately after a startling occurrence or traumatic event and he had no opportunity to fabricate, or make up his story. The report of William Sareño to the PNP of Tibiao as regards the shooting incident in the evening of February 19, 2001 immediately after the incident happened satisfy all the elements of *res gestae* that is, "the statement is spontaneous; (b) it is immediately before, during or after a startling occurrence." In the report there was only one assailant and he is unidentified.[9]

We are not persuaded. The ride of *res gestae* applies when the declarant himself did not testify, provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[10]

In the instant case, the declarant, Sareño, testified and was cross-examined in court. Hence, there is no need to apply the rule on *res gestae*.

Sareño categorically testified that he saw four persons emerging from the clump of banana plants; that two of them were armed with short firearms; that he was shot by Tuason; that while in the act of escaping, he heard another shot fired; and that, because of familiarity, proximity and the light coming from the fluorescent lamps lighting the gasoline station, he was able to identify the assailants as Tuason, Flores, Nicolas, and Absalon.[11] Sareño testified as follows:

Q:

Now, in the course of your inspection of the premises of the Gasoline Station as you said awhile ago, was there an unusual incident that happened Mr. Witness?

A:

Yes.

Q:

What happened, please tell us.

A:

The four (4) of them suddenly came out from the Banana plants.

Q:

Four (4) what?

A:

Four (4) persons.

xxxx

Q:

So what happened next once you saw four (4) persons came out of the clump of banana plants?

A:

From these four (4) persons I saw two (2) of them holding short firearms.

xxxx

Q:

You said that you were shot at by this certain Mr. Mike Tuazon while on the act of running, that is what you said? A: Yes, when I was about to run he shot me.

xxxx

Q:

And you were able to run Mr. Witness despite the fact that you were shot at by Mr. Tuazon?

A:

Yes, I was able to run because I did not feel the pain yet.

Q:

While running what have you heard if anything Mr. Witness?

A:

I heard another explosion but I did not mind it instead I continued on running.

xxxx

Q:

Alright, where that second explosion that you heard come from?

A:

It came from the place where I was shot upon. It also came from the place where I was shot upon.

xxxx

Q:

Now, were you able to identify these four persons Mr. Witness?

A:

Yes.

Q:

Now, you identified them by faces?

A:

Yes, I recognized them because of the light coming from the fluorescent lamp and they are also from that place.

Q:

Of course it was already night time because it was already 9:00 o'clock in the evening, am I correct?

A:

Yes.

Q:

How were you able to identify faces of the four (4) persons considering that it was already nighttime Mr. Witness?

A:

It was bright light coming from the fluorescent lamp and they are also from the town proper.

That petitioner was not identified in the police blotter entry is of no moment. In several cases, we have held that positive identification prevails over police blotter entries.

In *People v. Dacibar and Dicon*, we ruled that "the fact that the first blotter report made by the victim's wife refers to the assailants as "unidentified persons" does not detract from the veracity of her positive identification of appellants as the perpetrators of the crime in a later report, and in the course of trial. In the first place, we have held that entries in the police blotter should not be given undue significance or probative value, as they do not constitute conclusive proof."^[12]

In *People v. Gutierrez*, we held that "(T)he accused Castillo's argument that he was not ably identified to have been one of the assailants as even the police blotter entry regarding the incident failed to mention him deserves scant consideration. We have ruled that police blotter entries should not always be given due significance or probative value for they do not constitute conclusive proof of the identities of suspected assailants."^[13]

In *People v. Cabrera, Jr.*, we stated that "entities] in the police blotter about the suspects being 'unidentified' will not help the cause of the accused. It does not mean that Shirley Aguilus failed to identify the accused when she reported to the police, x x x. Besides, even granting in arguendo that Shirley failed to identify the accused to the police when she reported the incident, her failure to do so will not impair her credibility."^[14]

Moreover, we have previously held that discrepancies between an open court testimony and a police blotter entry do not affect the credibility of the witness.

xxx We thus have on record Honorata's positive identification of accused-appellant as her assailant. Coupled with the oft-quoted doctrine that entries in police blotters, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth stated in such entries since they are usually incomplete and inaccurate (*People vs. Padlan*, 290 SCRA 388 [1998]), we hold that any discrepancy in the police blotter entry and the open court testimony of Honorata does not affect her credibility.

It must also be remembered that the entry in the police blotter was made at 6:30 on the morning of February 12, 1997, only a few hours after the rape and robbery. At that time, Honorata may not have yet fully recovered from the traumatic ordeal she had gone through, resulting in an inaccurate entry in the police blotter. Besides, minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall (*People vs. Sta. Ana*, 291 SCRA 188 [1998]).[15] (Emphasis supplied)

Although Sareño's testimony did not identify who shot Lim, the latter's testimony unequivocally implicated petitioner. Lim categorically testified that he saw four persons emerging from the clump of banana plants; that two of them were armed with short firearms; that said armed persons aimed their firearms at him; that Sareno, while in the act of running away, was shot by Tuason; that Sareno was able to escape; that he remained where he was because, as a polio victim, he could not run; that Flores shot him; that he fell face down and played dead; that Nicolas kicked him to make sure that he is dead; that Tuason divested him of his money and necklace; and that, because of familiarity, proximity and the light coming from the fluorescent lamps lighting the gasoline station, he was able to identify the assailants as Tuason, Flores, Nicolas, and Absalon.[16]

Q:

You said while ago that while you and your companion your helper Mr. William Sareno was on the left portion of your gasoline station you were surprised to see thereat four (4) persons coming out from nowhere. The question is this, what happened after you saw them?

A:

Upon seeing the four (4) persons, Jerome Flores, Mike Tuason. Bobit Nicolas and Jerosé Absalon, we were surprised, Sir.

Q:

Now, you mentioned names, are you telling us now that you were able to identify those persons the first time you saw them?

A:

Yes, Sir.

Q:

Why were you able to identify them when it was already at around 8:30 in the evening?

A:

It is because of our near distance to each other and because of the light coming from the fluorescent lamp, Sir.

xxxx

Q:

Now, was it the first time that you saw the persons of Jerome Flores, Mike Tuazon or Joven Tuazon, Bobit Nicolas and Jerosé Absalon on the night of February 19, 2001 at around 8:30 in the evening?

Defense:

Leading question, Your Honor.

Court:

Answer.

A:

Long ago because Jerome Flores is the first cousin of my wife, Sir.

Q:

You said that Jerome Flores is the first cousin of your wife, why Mr. witness?

A:

His father Honorable SB Flores and my mother-in-law, the mother of Mary Grace Flores are siblings, Sir.

Q:

You mentioned of certain Mary Grace to whom are you referring to?

A:

My wife, Sir.

Q:

A:

How about Mike Tuazon, how well did you know Mike Tuazon before the incident on February 19, 2001?
I have known him since he was a small child and they were also a native of Tibiao, Sir.

Q:

How about the accused Bobit Nicolas, how well did you know the person of Bobit Nicolas prior to February 19, 2001?

A:

He's also a native of Tibiao, Sir.

Q:

How about Jerosé Absalon?

A:

The same reason, Sir.

Q:

So what happened after the four (4) accused came out from nowhere within the premises of your gasoline station, Mr. witness?

A:

I was startled upon seeing the four (4) of them especially that Jerome Flores and Mike Tuazon were carrying different firearms and aiming at me, Sir.

Q:

And what happened after that?

A:

Without saying anything, Mike Tuazon shot William Sareno who ran, Sir.

Q:

Are you telling me that William Sareno was shot while running?

A:

He was about to run when Mike Tuazon shot him, Sir.

xxxx

Q:

You said that while William Sareno your companion was about to run, a shot was heard Mr. witness. Now, where did the shoot came from?

A:

From Mike Tuazon, Sir.

Q:

Are you telling us that you saw Mike Tuazon holding a firearm?

A:

Yes, Sir.

Q:

Was he holding a long or short firearm Mr. Witness?

A:

Short firearm, Sir.

Q:

Now, after you heard the first gunshot coming from Mike Tuazon, what did you do if you did anything?

A:

I remained standing while still facing them because I could not run, Sir.

Q:

Did you not attempt to flee, Mr. Witness?

A:

No, because I could not run, Sir.

Q:

So, what happened?

A:

That was the time when Jerome Flores shot me, Sir.

Q:

Are you telling us now that another gunshot came from the group of the accused, Mr. witness?

A:

Yes, Sir.

Q:

And that gunshot came from certain Jerome Flores?

A:

Yes, Sir.

Q:

For about how many seconds did it come to pass when you heard the first shot and you heard the second shot which you said it came from Jerome Flore, Mr. witness?

A:

Less than three (3) seconds because it immediately followed, Sir.

Q:

Immediately thereafter?

A:

Yes, Sir.

Q:

You said that the first gunshot came from Mike Tuazon and the second one came from Jerome Flores?

A:

Yes, Sir.

Q:

How about the accused Bobit Nicolas and Jerose Absalon, where were they then at that time when you heard the first and second shot?

A:

They were just standing there waiting, Sir.

Q:

You said that immediately thereafter after William Sareno was shot upon by Mike Tuazon and you were

likewise shot upon by a certain Jerome Flores the accused in this case, were you hit Mr. witness?

A:

Yes, Sir.

Q:

Where?

A:

On the left chest, Sir.

Q:

What happened after you were hit on your left breast by a gunshot coming from Jerome Flores?

A:

I fell down, Sir.

Q:

You said you fell down, you fell down on your back or you fell i down face down?

A:

Face down, Sir.

Q:

So, what happened after that?

A:

I felt that the four (4) of them surrounded me and I heard Bobit Nicolas uttered, "Be sure that he is dead." Then he kicked me, Sir.

Q:

You were kicked by Bobit Nicolas?

A:

Yes, Sir.

Q:

And what happened after you were kicked by Bobit Nicolas?

A:

I play dead, Sir.

Q:

You play dead?

A:

Yes, Sir.

Q:

And what else happened?

A:

I felt that Mike Tuazon took the money from my pocket, Sir.

Q:

And what else happened?

A:

Mike Tuazon also took my necklace aside from the money from my pocket, Sir.

We find petitioner's alibi not deserving of merit. It is settled that an alibi is an inherently weak defense, easy to fabricate and highly unreliable. For said defense to prosper, the accused must not only prove that he was at some other place at the time the crime was committed but that it was, likewise, physically impossible for him to be at the locus criminis at the time of the alleged crime.[17]

The prosecution showed that it was not physically impossible for petitioner to be at the locus criminis since, by his own admission, the subject Petron gasoline station is only one kilometer away from Carolina Store, where he allegedly was in the evening of February 19, 2001.

WHEREFORE, the January 16, 2008 Decision of the Court of Appeals in CA-G.R. CR No. 00327 which affirmed the September 14, 2005 Joint Decision of the Regional Trial Court of Antique, Branch 64 finding petitioner Jerome Flores guilty of Frustrated Homicide in Criminal Case No. 0489, and sentencing him to an indeterminate imprisonment of 4 years and 2 months of prision correccional as minimum to 8 years, 8 months and 1 day of prision mayor as maximum and ordering him to pay Ronald Lim, jointly and severally with his co-accused,, P30,000.00 as civil indemnity and P72,397.05 as actual damages is AFFIRMED.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Peralta, and Abad[*], JJ., concur.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated September 30, 2009.

[1] Rollo, pp. 24-38; penned by Associate Justice Antonio L. Villamor, and concurred in by Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier.

[2] CA rollo, pp. 17-60; penned by Presiding Judge Rafael O. Penuela.

[3] Records, Criminal Case. No. 0489, pp. 23-24.

[4] Records, Criminal Case No. 0515, pp. 23-24.

[5] CA rollo, pp. 59-60.

[6] Rollo, p31.

[7] Id.at 8-9.

[8] Id. at 11.

[9] Id. at 11-12.

[10] *People v. Cabrera, Jr.*, G.R. No. 138266, April 30, 2003, 402 SCRA 299, 307-308; *People v. Oposculo, Jr.*, G.R. No. 124572, November 20, 2000, 345 SCRA 167, 176.

[11] TSN, July 30, 2003, pp. 5-11.

[12] G.R. No. 111286, February 17, 2000, 325 SCRA 725, 736.

[13] G.R. Nos. 137610-11, February 6, 2002, 376 SCRA 360, 373.

[14] G.R. No. 138266, April 30, 2003, 402 SCRA 299, 308.

[15] *People v. Legaspi*, G.R. Nos. 136164-65, April 20, 2001, 357 SCRA 234, 240-241.

[16] TSN, January 22, 2003, pp. 6-15.

[17] *People v. Mansueto*, G.R. No. 135196, July 31, 2000, 336 SCRA 715, 734.

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