

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. PO1 CYRIL A. DE GRACIA, RESPONDENT.

G.R. No. 213104. July 29, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the February 10, 2014 Decision[1] and the June 17, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 128396, which denied the petition for certiorari, assailing the August 31, 2012 Order[3] of the Regional Trial Court, Branch 40, Manila City (RTC) in Criminal Case No. 12-289471, for granting the petition for bail of respondent PO1 Cyril A. De Gracia (De Gracia).

The Facts

De Gracia was charged with the crime of Murder, with a prescribed penalty of reclusion perpetua. On February 22, 2012, while detained in the Manila City Jail, accused filed a petition for bail.

Prosecution's Evidence

During the hearing on the petition for bail, the prosecution presented Robert Bryan Villanueva (Robert), Joshua Mendoza (Joshua) and Merwin Irison (Merwin), as their witnesses, to prove that the evidence of guilt against the accused for the crime of murder was strong.

Their testimonies tended to show that on December 28, 2011, at about past 10:00 o'clock in the evening, victim David Paul (David) together with Robert, Joshua, Merwin, Bless Roquero (Bless) and their other friends celebrated their post-Christmas party in the house of Rio Polintan (Rio), at Ana Sarmiento Street, Malate, Manila.

At about past 12:00 midnight of December 29, 2011, De Gracia came and uttered, "Gate-crasher ako, okay lang ba.?" A policeman by profession, he was then in civilian clothes. Sarah, the sister of Rio, then asked De Gracia if he had any pasalubong, to which he replied, "Ito bala." De Gracia then talked with Rio, whom he personally knew. He joined the group and drank coffee cocktail. He then saw Bless at the dining area and recognized her as the ex-girlfriend of his friend. The two talked with each other.

At about 2:00 o'clock in the morning, De Gracia and Bless were still conversing while seated beside each other in the sala. After cooking, Merwin went to the sala and placed some food on the table. He noticed that the gun of De Gracia was also on top of the table. Merwin then saw him insert a magazine with bullets in his gun, place it in his holster and tuck it in his waistline. Merwin sat beside David, who was seated opposite De Gracia and Bless.

After a while, Merwin stood up and went to the kitchen to eat some lumpia. Robert then heard Bless say to De Gracia, "Kayang kaya ko ngang bugbugin ang ex ko, ikaw pa kaya." After uttering these words, Bless pulled De Gracia's hair. Joshua, who was then at the stairway, heard De Gracia, in a somewhat high pitch tone, threaten Bless by saying, "Sige kapag sinabunutan mo ako ulit, babarilin ko yung kaibigan mo." Joshua saw De Gracia

hold his gun and point it at David. All of a sudden, De Gracia fired his gun, hitting David on the chest. Out of fear, Robert ran to the kitchen while Merwin, who was then in the kitchen, overheard the gunshot. When the latter turned his head, he saw David slowly slipping down from his seat. Merwin shouted, "Si Dave!" and carried him towards the door.[4]

Robert testified that De Gracia was about 1 to 1 1/4% meters away from David when he fired the gun.

Joshua related that there was no heated discussion within the group before the shooting; that when De Gracia uttered the threatening words to Bless, there was no anger in his tone; that De Gracia had a drink but was not intoxicated; and that after De Gracia threatened Bless, the gun fired.

Merwin added that he saw De Gracia holding the gun after shooting David; that De Gracia approached David and lifted his t-shirt and there was blood on his chest; that De Gracia told them to bring David inside his vehicle; and that David was brought to the Ospital ng Maynila where he was pronounced dead.[5]

The RTC Ruling

In its August 31, 2012 Order, the RTC granted the petition for bail. The trial court ruled that treachery, the essential qualifying element of murder, was not sufficiently established. It found that based on the testimonies of the witnesses, nothing would show that De Gracia made preparations to kill David in a treacherous manner to ensure the execution of the felony. Rather, the killing was perpetrated on the spur of the moment. The RTC concluded that the evidence of guilt for murder was not strong. The decretal portion of the order reads:

WHEREFORE, premises considered, accused-petitioner CYRIL DE GRACIA y ARCE is ADMITTED TO BAIL in such amount as the prosecution may suggest subject to the approval of this court.

SO ORDERED.[6]

The public prosecutor filed a motion for reconsideration,[7] but it was denied by the RTC in its Order,[8] dated November 28, 2012. In the same order, the RTC set the bail in the amount of One Hundred Thousand Pesos (P100,000.00) for his provisional liberty.

Not in conformity, the public prosecutor filed a petition for certiorari against the assailed order of the RTC before the CA. The appellate court issued a resolution[9] requiring the rectification of certain defects in the petition. Subsequently, the Office of the Solicitor General (OSG) filed an amended petition for certiorari with the CA. The OSG argued that treachery was proven because De Gracia decided to shoot any of the friends of Bless in an instant.

The CA Ruling

On February 10, 2014, the CA rendered the assailed decision, dismissing the petition of the OSG.[10] The CA stated that, while the act of shooting was sudden, there was no evidence showing that De Gracia consciously adopted this method of attack. The prosecution had not shown that he attended the party with the nursed intention to kill anyone there.

The CA also considered the events that transpired before and after the shooting. Merwin testified that De Gracia did not know David and had no reason to be angry with him. De Gracia even tried to bring David to the hospital after being shot. Thus, the CA agreed with the RTC that the prosecution failed to establish that the evidence for murder against the accused was strong.

The OSG moved for reconsideration, but its motion was denied by the CA in the assailed resolution.

Hence, this present petition.

ISSUE

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE RTC WAS CORRECT TO CONCLUDE THAT THE PROSECUTION FAILED TO ESTABLISH THAT THE EVIDENCE SHOWING RESPONDENT PO1 CYRIL DE GRACIA GUILTY OF MURDER IS STRONG AND, THUS, AGREEING WITH THE RTC'S ORDER ADMITTING RESPONDENT TO BAIL.[11]

The OSG asserts that the evidence proving guilt of the accused was strong. It cites the RTC order which stated that "it is evident that the accused decided to shoot any of the friends of Bless in an instant." [12] The OSG points out that the word "decided" indicates the conscious and deliberate adoption of a mode of attack by the accused to facilitate the killing without risk to himself.

While the OSG may concede that the suddenness of the attack does not, by itself, suffice to support a finding of treachery, it qualifies that "[w]here, however, proof obtains that the victim was completely deprived of a real chance to defend himself against the attack, as in the instant case, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim, the qualifying circumstance of treachery ought to and should be appreciated." [13]

In his Comment, [14] De Gracia emphasized that as the assailed order was affirmed by the CA, it was crystal clear that the RTC did not commit any grave abuse of discretion in granting his petition for bail.

In its Reply, [15] the OSG reiterated that the RTC actually found that De Gracia was determined to kill and deliberately shot David in an instant. Thus, the element of treachery was present.

The Court's Ruling

The petition lacks merit.

An accused charged with

a crime punishable by

reclusion perpetua may

still be granted bail

The accused was charged with the crime of murder, which carries with it the penalty of reclusion perpetua, hence, a non-bailable offense. From the standpoint of a layman, an accused indicted for a "non-bailable offense" cannot be granted bail prior to his conviction. Such interpretation, however, is technically inaccurate.

Under Section 13, Article III of the 1987 Constitution, those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, are not entitled to bail before conviction. A reading of the provision reveals that bail shall only be denied when the evidence of guilt for the offense punishable by reclusion perpetua is strong. Necessarily, in all other instances, bail must be granted before the conviction of the accused. The right to bail flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt. [16] Evidently, despite being charged with a non-bailable offense, an accused can still possibly acquire bail.

Conversely, if the evidence of guilt is strong, then the accused cannot enjoy provisional liberty before his conviction. There is nothing unreasonable in denying the right to bail to one charged with an offense punishable with reclusion perpetua when evidence of guilt is strong, as it is likely that the accused, rather than await the outcome of the proceeding against him with a penalty demanding a lifetime of incarceration, would be tempted to

flee the jurisdiction.

The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. By judicial discretion, the law mandates the determination of whether proof is evident or the presumption of guilt is strong. "Proof evident" or "Evident proof in this connection has been held to make clear, strong evidence which leads a well-guarded dispassionate judgment to the conclusion that the offense has been committed as charged, that accused is the guilty agent, and that he will probably be punished capitally if the law is administered. "Presumption great" exists when the circumstances testified to are such that the inference of guilt naturally to be drawn therefrom is strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion.[17]

Guided by these judicial pronouncements, the prosecution must establish before the trial court, after proper notice and hearing, that the evidence against an accused for the crime charged is strong so as to deny him of his provisional liberty.

Treachery was not proven

by strong evidence

De Gracia is charged with the crime of murder under Article 248 of the Revised Penal Code (RPC). The elements of this crime are: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (d) that the killing is not parricide or infanticide.[18]

Here, the prosecution alleged that the aggravating circumstance which qualified the killing to murder was treachery or *alevosia*. Consequently, the prosecution must have established the existence of the crucial elements of treachery with strong evidence to deny the accused of his bail. Two (2) conditions must concur for treachery to be appreciated: first, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and, second, the means of execution was deliberately or consciously adopted.[19]

In *People v. Villalba*, [20] the Court held that the suddenness of the attack, the infliction of the wound from behind the victim, the vulnerable position of the victim at the time the attack was made, or the fact that the victim was unarmed, do not by themselves render the attack as treacherous. The means employed for the commission of the crime or the mode of attack must be shown to have been consciously or deliberately adopted by the accused to ensure the consummation of the crime and at the same time, eliminate or reduce the risk of retaliation from the intended victim.[21]

In this case, both the CA and the RTC were one in finding that although the shooting of David was sudden, there was no evidence showing that De Gracia deliberately and consciously adopted such mode of attack to ensure the commission of the crime.

Robert testified before the trial court as follows:

Q:

Are you referring to whom when you say the two of them?

A:

Bless and the accused.

Q:

Did you hear what they were talking about?

A:

Yun ano lang po, "pag sinaktan mo ang mga kaibigan ko, sasabunutan kita."

Q:

Who said that?

A:

Bless.

Q:

To whom did he say that?

A:

To the accused.

Q:

And what did the accused reply when she said that if any?

A:

He suddenly pointed the gun, and the gun fired. The incident happened so fast.

Joshua also testified as follows:

Q:

At any point while you were on your laptop, was there any instance that caught your attention as to the dialogue between accused and Bless?

A:

My attention was focus [on] them when I heard the word, "sige sabunutan mo ako ulit, babarilin ko itong kaibigan mo."

Q:

Who was in front of him at that time?

A:

It was Dave, ma'am.

Q:

So when you look at the accused pointing the gun at Dave, can you tell us what happened next, if any?

A:

Right after he said those words, the gun fired, ma'am.

Q:

Who was hit?

A:

Dave was hit, ma'am.

The testimonies of the prosecution witnesses only pointed to the suddenness of the shooting. Nowhere in their testimonies did they clearly state that De Gracia consciously adopted the means of firing the gun. David might have no chance to defend himself, but there was no showing that De Gracia deliberately chose the means employed which resulted in his killing. Absent any circumstance that accused wilfully and thoughtfully espoused, through any external manifestation, the manner to kill David, the element of alevosia could not be appreciated. It is a well-settled rule that treachery is never presumed.[22]

The OSG, however, insists that the RTC had found that De Gracia consciously decided to shoot David in an instant as follows:

In the instant case, based on the un rebutted evidence presented by the prosecution, it is evident that the accused decided to shoot any of the friends of Bless in an instant. Irritated by the act of Bless in pulling his hair, the accused suddenly aimed and fire his gun to anyone, xxx[23]

[Emphases Supplied]

The Court is not persuaded. The assailed RTC order should be read as a whole and not in isolation. A cursory reading thereof demonstrates that the quoted text refers to the discussion of the trial court as to the swiftness of the attack. The RTC continued, nevertheless, that there was no evidence that De Gracia deliberately and consciously adopted such treacherous mode to kill David. The very short interval of time,[24] between the act of De Gracia in threatening Bless and the actual shooting, strongly suggests that the accused was not able to meditate on the employment of his attack. De Gracia was simply irritated by the childish act of Bless of pulling his hair when he shot David. Such fact showed that the killing was perpetrated on the spur of the moment.

Also, as accurately observed by the CA, the conduct of the accused before and after the shooting confirmed that he did not have a treacherous mindset. De Gracia did not know David and had no reason to be angry with him, and even offered his vehicle to bring David to the hospital after the shooting. Such acts are indeed inconsistent with the allegation of treachery.

Insofar as the evidence presented during the hearing on the petition for bail is concerned, the Court agrees with the RTC and the CA that the prosecution failed to prove that the accused deliberately or consciously adopted the means of execution. Without the crucial element of treachery being established, the evidence of guilt for the crime of murder against the accused is deemed not strong. Accordingly, the accused is entitled to bail. The present ruling, however, shall not in anyway affect the merits of the case before the RTC.

WHEREFORE, the petition is DENIED. The February 10, 2014 Decision and the June 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 128396 are hereby AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Brion, Perlas-Bernabe,[*] and Leonen, JJ., concur.

[*] Designated Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 2115, dated July 22, 2015.

[1] Rollo, pp. 142-151; Penned by Associate Justice Marlene Gonzales-Sison with Associate Justice Rosmari D. Carandang and Associate Justice Edwin D. Sorongon, concurring.

[2] Id. at 152-153.

[3] Id. at 57-63; Penned by Presiding Judge Alfredo D. Ampuan.

[4] Id. at 33-34.

[5] Id. at 59.

[6] Id. at 63.

[7] Id. at 64-66.

[8] Id. at 74-75.

[9] CA rollo, p. 239.

[10] Id. at 42.

[11] Rollo, p. 16.

[12] Id. at 61.

[13] Id. at 19.

[14] Id. at 130-132.

[15] Id. at 160-166.

[16] *Government of the United States of America v. Purganan*, 438 Phil. 417, 452 (2002).

[17] *People v. Hon. Cabral*, 362 Phil. 697, 709 (1999).

[18] *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013, 705 SCRA 629, 642.

[19] *People v. Umawid*, G.R. No. 208719, June 9, 2014, 725 SCRA 597, 607.

[20] G.R. No. 207629, October 22, 2014.

[21] *People v. Dagani*, 530 Phil. 501, 520-521 (2006).

[22] *People v. Ramos*, 411 Phil. 115, 125 (2004).

[23] Rollo, p. 61.

[24] Id. at 61, where Robert testified that accused immediately shot David less than 3 seconds after finishing his sentence with Biess. On the other hand, id. at 61, Joshua testified that accused shot David after accused uttered his words.

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