

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO BORJA, DEFENDANT-APPELLANT.

G.R. No. 54114. June 28, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Charged with, and convicted of, murder by the then Court of First Instance of Baguio and Benguet, Branch IV, and sentenced to life imprisonment, to indemnify the heirs of the deceased for the death of the victim, including actual and moral damages, Arsenio Borja appealed the judgment of conviction, assigning the following errors:

"I. THE LOWER COURT ERRED IN ITS APPRECIATION OF THE EVIDENCE RESULTING IN ERRONEOUS CONCLUSIONS AND FINDINGS OF FACTS.

"II. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF MARIO ATICAO AND JULIAN MARINAO.

"III. THE LOWER COURT ERRED IN NOT FINDING THAT WITHOUT THE ALLEGED EYEWITNESS ACCOUNTS OF ATICAO AND MARIANO THE CASE AGAINST APPELLANT IS PURELY CIRCUMSTANTIAL AND BASED ON THE EVIDENCE CANNOT RESULT IN A CONVICTION BEYOND REASONABLE DOUBT.

"IV. THE LOWER COURT ERRED IN ITS FAILURE TO CONSIDER EVIDENCE ADDUCED SUPPORTING THE INNOCENCE OF THE APPELLANT.

"V. THE LOWER COURT ERRED IN ADJUDGING APPELLANT GUILTY OF MURDER.

"VI. THE LOWER COURT ERRED IN ASSESSING DAMAGES AGAINST APPELLANT." [1]

Although appellant faintly hinted at first that the fatal shots could have been fired by someone else, he ultimately had to admit that it was he who caused the death of the deceased, but invokes the exempting circumstance that he was performing a lawful act with due care when he caused the injury by mere accident without fault or intention of causing it. [2]

From appellant's own version, the exempting circumstance invoked can not be applied. He admitted firing two (2) shots, acts which in themselves, are not lawful. According to him, he was inspecting his area of assignment when he saw from a distance of some ninety (90) yards the man sitting on a big stone whom he did not recognize, and holding a bundle as big as a man's head. He waved at him to approach, but the man did not move. He then shouted at him, and the man stood up. He loaded his rifle, cocked it and squeezed the trigger. These acts of appellant show he was not in the performance of a lawful duty.

As to why he fired his gun, appellant also gave a conflicting story. At one time, he said he fired and shot at the deceased because he was challenged. At another time, he said he fired a warning shot so that the deceased would not run away. The alleged challenge could not possibly come from an unarmed man directed to a man armed with a powerful gun. Much less would the man dare run away and invite the risk of being fired upon.

Appellant's accident version of the second shot could neither inspire belief. He allegedly slipped, and to prevent his fall, he stuck his gun on the ground for support, but the gun fell, and it fired because he happened to squeeze the trigger. It was this accidental firing that appellant alleged to have hit the deceased fatally. Appellant's conduct of not giving any succor to the fallen man does not lend credence to his version of unintended shooting.

On the other hand, the eyewitness' account that appellant deliberately aimed and fired at the deceased has all the hallmarks of truth and credence. They had no motive to falsely impute to appellant intentional killing by the deliberate use of the gun. Appellant's own testimony that the deceased and companion challenged him itself lends support to the two (2) eyewitnesses' testimony that appellant took deliberate aim at the deceased and fired.

Appellant's claim of having no motive to kill the deceased does not help him any, once it is shown by credible evidence, with strong corroboration from appellant's own testimony, that it was he who, and no one else, actually killed the victim.

Neither is appellant's attempt to show discrepancy between the state witnesses' affidavits and their testimony in court of any avail. The infirmities of sworn statements, arising out of their notorious incompleteness are all too well known to be virtually taken judicial notice of. The credibility of the eyewitnesses which is the subject of the main assignment of error (second assignment) is thus not affected at all by the circumstance just pointed out.

Alleged self-contradictions committed by the aforementioned witnesses are pointed to as also discrediting their testimony. These alleged self-contradictions are on minor and inconsequential matters, and in some instances, they are really non-existent. This is also true with the alleged contradictions between the testimonies of the two (2) witnesses. They are on trivial matters and at best, flimsy.

The assignment of error as to the assessment of damages against him is predicated on the contention of appellant that he is exempt from criminal liability obviously invoking paragraph 4 of Article 12 of the Revised Penal Code. However, since the court is rejecting his theory of pure accident, his contention of being exempt from civil liability may not be accepted, it being the express finding that appellant is guilty of the crime charged.

WHEREFORE, the guilt of appellant having been proved beyond reasonable doubt, the judgment appealed from is affirmed in toto, with costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and Escolin, JJ., concur.
Abad Santos, J., took no part.

[1] pp. 172-173, Rollo.

[2] Article 12, par. 4, Revised Penal Code.

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