

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELPIDIO OBENQUE ALIAS PEDY, ACCUSED-APPELLANT.*G.R. No. 57893. January 30, 1987*

Ponente: PARAS, J.

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This is an appeal from the decision dated May 7, 1981 of the then Court of First Instance of Cebu,[1] finding the accused Elpidio Obenque, alias Pedy, guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law, and to pay the heirs of the deceased, Sergio Cabradilla, the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs (Rollo, pp. 6-23).

It appears from the records that at about 9:00 o'clock in the evening of January 18, 1978, a group composed of Victor Villarin, the deceased Sergio Cabradilla, Edgar Resma, Jose Hortel, Philip Empacis, Titong Cabillon and Ely Boy Cañares were walking along Tonkil Avenue, Minglanilla, Cebu, on their way to Linao where they live (TSN, June 5, 1979, pp. 11-15, 75).

It was already 11:30 o'clock when they were passing the house of accused Elpidio Obenque at Lipata, Minglanilla. Victor Villarin and Sergio Cabradilla were following their five companions at a distance of twenty-five (25) meters (Ibid., pp. 16-17). As they approached the house of accused Obenque, he came out of the gate of his residence allegedly to check the commotion in the street. Sergio greeted the accused: "Good evening, Noy," and the accused answered: "Good evening, also". After the exchange of greetings, Obenque walked towards the group ahead. Sergio Cabradilla and Victor Villarin followed the accused and when the latter reached the group, Sergio and Victor Villarin were about four (4) meters away. Accused Obenque scolded the whole group and asked: "Nganong nagabusar mo denhi?" (Why are you so abusive here?) The accused continued to scold them particularly Ely Boy Cañares (Ibid., pp. 19-31, 89-90).

While they were being confronted, the deceased Sergio Cabradilla asked for forgiveness from the accused saying, "Pasayloa lang mi, Noy, di namo usbon" (Please, forgive us, Noy, we'll not repeat it). The accused did not answer but continued scolding all of them. The deceased Sergio continued to ask forgiveness for about five (5) times on behalf of the group (Ibid., pp. 31-33).

However, the accused Obenque, with a pistol in his hand, which was later identified to be a .45 caliber from shells recovered from the scene of the crime, fired two shots into the air. Except for Victor Villarin who was scared, and Sergio Cabradilla who tried to talk to the accused by asking once more for forgiveness the group slowly dispersed (Ibid., pp. 33-37).

At this juncture, the accused, who was still infuriated, fired a third shot aimed pointblank at the forehead of Sergio Cabradilla (Ibid., pp. 37-39, 98-100). The victim fell down and died instantly. The accused continued to move around. Victor Villarin tried to help his fallen companion but the accused pointed the gun at him asking: "Dili ka modagan? Laban ka ba? (Are you going to run or to defend him?) Upon hearing this, Villarin ran away (Ibid., pp.

40-42).

Meanwhile, the other members of the group arrived at their respective houses in Linao. After twenty-five minutes, the six companions of the victim, together with the victim's four brothers, returned to the scene of the incident to retrieve the victim's body (Ibid., pp. 45-46). However, they found nothing there except traces of human blood and the slippers of the victim on the exact spot where the group had been confronted by the accused. They searched the nearby locality of Linao. The victim's brothers also inquired from all the hospitals in Minglanilla as well as in Cebu City but the body could not be found (Ibid., pp. 47-48).

The following day, January 19, 1978, Villarín reported the shooting incident to the Office of the Station Commander, Minglanilla, Cebu. Pat. Clariño P. Basabe was assigned to investigate the case (TSN, pp. 49-50, June 5, 1979; TSN, p. 30, June 6, 1979). Villarín pointed to the accused Obenque as the assailant of the deceased (TSN, p. 52, June 5, 1979). The mother and relatives of the victim likewise reported the incident to the Office of the Station Commander (TSN, pp. 3-6, June 6, 1979). It appears further from the records that a certain Pat. Arturo Larrobbis went to the scene of the crime at about 12:00 o'clock midnight on January 18, 1978 and turned over to Pat. Basabe three (3) empty shells of caliber .45 (TSN, p. 7, June 6, 1979).

Subsequently, the police of Minglanilla received information that the body of a dead man was spotted at Carcar, Cebu (about 60 kms. from the scene of the incident) (TSN, pp. 8-9, June 6, 1979). Pat. Basabe, Villarín, relatives of the victim and a photographer proceeded immediately at about 3:00 o'clock in the afternoon of January 19, 1979 to Tanauan, Carcar, Cebu, to investigate the body of the dead man who was found in a deep ravine of about 200 feet (TSN, pp. 52-54, June 5, 1979; TSN, pp. 10-12, June 6, 1979). Villarín and Pat. Basabe identified the body to be that of Sergio Cabradilla (TSN, p. 58, June 5, 1979; TSN, p. 15, June 6, 1979).

The body of Sergio Cabradilla was brought back to Minglanilla by the Cosmopolitan Funeral Parlor (TSN, pp. 66-67, June 5, 1979). Later on, an autopsy was performed on the victim's cadaver by Dr. Ceferino Y. Cunanan, the National Bureau of Investigation (NBI) Medico-Legal Officer for Visayas and Mindanao (TSN, p. 126, July 16, 1979). A necropsy report prepared by Dr. Ceferino Cunanan dated February 6, 1979 stated among others that the cause of death of Sergio Cabradilla was a gunshot wound in the head (Exhibit G, p. 3, Folder of Exhibits).

On January 21, 1978, at about 9:30 a.m., the accused, Elpidio Obenque, surrendered to the Philippine Constabulary (PC) authorities (Exhibit T, p. 18, Folder of Exhibits).

On January 23, 1978, M/Sgt. Victoriano V. Villaremo, officer-in-charge of the Investigation Section Headquarters, INP, Cebu PC, was dispatched by Capt. Cabigon to Minglanilla to pick up the Brasilia car with Plate No. B-EE-164 belonging to the accused (TSN, pp. 3-4, July 18, 1979) which was surrendered on January 19, 1978 to the police authorities. An ocular inspection of the tangerine rug inside the car showed that there were blood stains. A laboratory examination of the blood stains on the rug performed by Myrna P. Areola, Forensic Chemist, PC, confirmed that the spots on the rug were human blood (TSN, pp. 9-13, 15-16, July 18, 1979; Exhibit V, p. 20, Folder of Exhibits).

For that killing, Elpidio Obenque, alias "Pedy", was charged with the crime of murder in an information dated April 5, 1979, and amended on May 11, 1979, with the then Court of First Instance of Cebu. The amended information reads as follows:

"The undersigned 1st Assistant Provincial Fiscal of Cebu, amending the information for murder filed against the above-named accused dated April 5, 1979, charges the said accused for murder committed as follows:

That on the 18th day of January, 1978, at 11:30 o'clock in the evening, more or less, in the sitio of Lipata, Barangay Linao, Municipality of Minglanilla, Province of Cebu, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused, with deliberate intent to kill, by means of treachery, did then and there wilfully, unlawfully, and feloniously shoot Sergio Cabradilla with an unlicensed caliber .45 pistol, hitting him at the midforehead 1.1 cms. to the left of the anterior median line, directed backwards, upward and medially to the right and making an exit located at the scalp at a point 5.5 cms. medial and 13.5 cms. above the right external auditory meatus, causing the instantaneous death of Sergio Cabradilla.

"That, after thus shooting to death Sergio Cabradilla, the accused Elpidio Obenque alias Pedy, in the furtherance of his criminal design, loaded the dead body of his victim in his Volkswagen Brasilia Sedan with Plate No. B-EE 164 series of 1977 and with utmost cruelty, dump the corpse in a ravine 200 meters deep, more or less, at Tanauan, Carcar, Cebu, 60 kms. more or less from the place of the incident at bar." (CFI Original Record, Vol. I, pp. 17-18).

In the meantime, accused Obenque filed on April 26, 1979 a petition for bail which was opposed on May 2, 1979 by the prosecuting fiscal (CFI Original Record, Vol. I, pp. 5-8).

On June 20, 1979, the trial court denied the petition for bail of the accused (CFI Original Record, Vol. I, p. 62).

A motion for reconsideration of the June 20, 1979 order was filed on June 28, 1979 (CFI Original Record, Vol. I, p. 68), and the prosecuting fiscal filed his opposition to said motion on July 1, 1979 (CFI Original Record, Vol. I, p. 78).

On August 24, 1979, the trial court denied the motion for reconsideration (CFI Original Record, Vol. I, pp. 160-161).

It appears likewise that on July 27, 1979, the accused thru counsel, filed a motion to quash and/or recall the warrant of arrest purportedly issued by the trial court on May 14, 1979 (CFI Original Record, Vol. I, p. 100). On August 13, 1979, the prosecuting fiscal filed his opposition to said motion, and a supplemental motion with manifestation was filed on August 21, 1979 by the counsel of the accused (CFI Original Record, Vol. I, pp. 118 and 133). Thereafter, or on September 3, 1979, the trial court denied the motion to quash (CFI Original Record, Vol. I, pp. 177-181).

The records also reveal that the accused, thru his counsel, filed on September 26, 1979 with the Supreme Court a petition for writ of habeas corpus, certiorari, prohibition with writ of preliminary injunction dated September 24, 1979, docketed as G.R. No. 51526, seeking, among others, to direct the Jail Superintendent of the Provincial Jail of Cebu to produce the body of the accused or to order the immediate release of the accused, to restrain the trial court from proceeding with the trial of Criminal Case No. 4417 against the accused, to set aside the September 3, 1979 order of the trial court and to dismiss the case (Rollo of G.R. 51526, pp. 1-14).

In a Resolution dated November 16, 1979, the Supreme Court, First Division, resolved to dismiss the petition for lack of merit (Rollo of G.R. 51526, p. 116).

The accused, as petitioner therein, moved to reconsider the aforesaid resolution on January 1, 1980 but the same was denied on January 23, 1980 (Rollo of G.R. 51526, pp. 137 and 142).

Entry of judgment was made on February 22, 1980, and on March 20, 1980, the case was remanded to the court a quo (Rollo of G.R. 51526, p. 145).

During the arraignment on June 5, 1979, accused Elpidio Obenque entered his plea of not guilty (Rollo, p. 27; CFI Original Record, Vol. I, p. 29; TSN, p. 5, June 5, 1979).

After trial, the lower court rendered its decision dated May 7, 1981, and promulgated on May 15, 1981, the dispositive portion of which states:

"WHEREFORE, based on all the foregoing considerations, the Court finds and declares the accused, ELPIDIO OBENQUE alias "Pedy", GUILTY, beyond reasonable doubt, of the crime of murder which is the same offense defined and penalized by Article 248 in relation to Article 61, both of the Revised Penal Code and considering the presence of a mitigating circumstance which is voluntary surrender and applying the provisions of the Indeterminate Sentence Law (Act 4103), as amended, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with the accessories provided by law and to indemnify the heirs of the late Sergio Cabradilla the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED." (Rollo, pp. 22-23).

From the aforesaid judgment, accused Obenque filed on July 17, 1981, a notice of appeal dated June 4, 1981 to the Court of Appeals on both questions of fact and of law (Rollo, p. 24).

On September 3, 1981, the records of the case were forwarded to the Supreme Court because the penalty imposed upon the accused is Reclusion Perpetua (Rollo, p. 1).

In his appellant's brief, accused Elpidio Obenque assigned the following errors:

I. THAT THE COURT A QUO ERRED IN FINDING AND DECLARING THAT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED BASED ON INSUFFICIENT CIRCUMSTANTIAL EVIDENCE.

II. THAT THE COURT ERRED IN FINDING THAT THE ACCUSED ELPIDIO OBENQUE IS THE VERY PERPETRATOR OF THE CRIME.

III. THAT THE FINDINGS OF THE TRIAL COURT AS TO THE QUALIFYING CIRCUMSTANCES OF MURDER ARE THEREFORE INCONSEQUENTIAL.

IV. THAT THE TOTALITY OF THE EVIDENCE FOR THE PROSECUTION DOES NOT OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

V. THAT THE DECISION OF THE TRIAL COURT DOES NOT CONFORM TO THE MATERIAL AND RELEVANT EVIDENCE. (Rollo, p. 55; Brief for the Appellant, p. 1)

The issues posed in the instant proceeding can be reduced into two, as follows:

- Whether or not the trial court erred in finding the accused guilty beyond reasonable doubt of the crime of Murder based on insufficient circumstantial evidence.
- Whether or not the aggravating circumstances of evident premeditation and treachery can be considered against the accused.

I

The accused claims that the trial court relied only on circumstantial evidence for his conviction. The claim is not meritorious because he was clearly and positively identified by the prosecution witnesses as the assailant. For one, witness Victor Villarin actually saw the accused fire at the victim Sergio Cabradilla (TSN, June 5, 1979, p. 37; Exhibit H, Folder of Exhibits, p. 4). Nobody, except the accused, confronted the members of the group of the deceased Sergio Cabradilla during the time of the shooting. It is undisputed that the accused came down from his house on that fateful night to investigate the group that was making noise in the street (TSN, October 16, 1980, p. 67). He was so angry that he confronted the group and even scolded the members (TSN, October 16, 1980, p. 91).

When the accused fired two successive shots into the air, the members of the group, except Villarin and the victim, dispersed and ran away for safety (TSN, June 5, 1979, p. 35). The third shot was aimed pointblank at the

victim who was barely a meter away from the accused (TSN, June 5, 1979, p. 37). The shot at the victim was so sudden that the latter had no opportunity to defend himself. Sergio Cabradilla was actually talking and apologizing for the conduct of the members of his group when he was suddenly fired upon by the accused (TSN, June 5, 1979, pp. 36-37).

The records reveal that the accused used a .45 cal. pistol as gleaned from the three empty shells recovered from the scene of the crime, which also confirm the number of shots he had fired that night (TSN, June 5, 1979, pp. 36-37).

The testimony of Victor Villarin, pointing to the accused as the perpetrator of the crime, was made in a direct and forthright manner, and is affirmed by his sworn statement made on the day following the incident, January 19, 1978, in the office of the Station Commander (Exhibit "H", Folder of Exhibits, pp. 4-5).

Furthermore, Jose Hortal, another eye-witness to the incident, gave a sworn statement to the effect that the accused fired two successive shots in the air, after which he pointed his gun at the members of the group, and when the gun was aimed at Sergio, the gun suddenly fired and Sergio fell. This sworn statement of Jose Hortal was given on the day following the incident on January 19, 1978, "when extraneous forces were not yet exerted upon him and his only motive was to tell the truth" (See Exhibit I, I-translation, Folder of Exhibits, pp. 6-8). It appears, however, that on March 20, 1979 or fourteen (14) months after the incident, Jose Hortal made a retraction exculpating the accused, which the trial court did not consider because it was highly suspicious (See Rollo, p. 20; CFI Decision, p. 15). It is generally said that retraction of witnesses must be taken warily (*People vs. Lao Wan Sing*, 125 SCRA 45 [1983]).

Therefore, the positive identification made by Victor Villarin and Jose Hortal of the accused Obenque as the perpetrator of the crime cannot be overcome by the mere denial of the accused himself and defense witnesses, Vicente Oberes and Wilfredo Deiparine, who stated that the firing came from the group but without identifying who fired the gun. The positive identification of the accused by the witnesses that he killed the victim establishes the guilt of the accused to a moral certainty (*People vs. Demeterio*, 124 SCRA 914 [1983]; *People vs. Cunanan*, 75 SCRA 15 [1977]).

Accused Obenque contends also that the prosecution should have presented Jose Hortal to corroborate the testimony of Victor Villarin, instead of just relying on his sworn statement taken before the police.

The contention is without merit. The matter of presenting witnesses for the People is a prerogative of the prosecuting fiscal. In the instant case, there was no need to present Jose Hortal because the testimony of Victor Villarin was already clear, sufficient and convincing. Thus, it has been held that the testimony of a single witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict (*People vs. Vengco*, 127 SCRA 242 [1984]; *People vs. Martinez*, 127 SCRA 760 [1984]; *People vs. Demeterio*, 124 SCRA 914 [1983]). Likewise, the credibility of evidence is not necessarily determined by the number of witnesses but the quality of testimony (*People vs. Pascual*, 127 SCRA 174 [1984]).

II

Evident premeditation was not present in the commission of the crime. To properly appreciate evident premeditation, it is necessary to establish with proof, as clear as the evidence of the crime itself, (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act (*People vs. Guiapar*, 129 SCRA 539 [1984]; *People vs. Gravino*, 122 SCRA 123 [1983]; *People vs. Camano*, 115 SCRA 688 [1982]). In the case at bar, the prosecuting fiscal failed to

establish the aforesaid requisites. Besides, there is no showing that the accused had planned to kill the victim Sergio Cabradilla.

However, it is clear that treachery attended the commission of the crime and qualifies it to murder. Attendance of treachery as a qualifying circumstance is founded upon the concurrence of two (2) conditions, to wit: (1) the employment of means, method, or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; and (2) that such means, method, or manner of execution was deliberately or consciously chosen (*People vs. Ganut*, 118 SCRA 35 [1982]). It has been proven that the deceased Sergio Cabradilla was shot while he was in the act of asking for forgiveness from the accused Obenque. The shooting of the victim was so sudden that the latter had no opportunity to defend himself. Treachery is present in case the attack is sudden and unexpected (*People vs. Alfaro*, 119 SCRA 204 [1982]).

Finally, accused Obenque admitted that the Volkswagen Brasilia car brought to the PC Headquarters in Cebu belonged to him. Just after the victim was shot, his body was removed from the scene of the incident and found in a ravine at Tanauan, Carcar, Cebu, which is about sixty (60) kilometers away from the scene of the crime. A laboratory examination of the tangerine rug inside the Brasilia car of the accused conducted by Myrna Areola, Forensic Chemist of the PC, showed that the blood stains on the car's rug were those of a human being. Evidently, the accused decided to load the dead body of his victim into his Brasilia car and dumped it into a ravine 200 feet deep at Tanauan, Carcar, Cebu in order to hide the effects of his criminal act. This actuation of the accused Elpidio Obenque in dumping the body of his victim constitutes an outrage or scoffing at the corpse of the victim which is another qualifying circumstance in the commission of the crime of murder.

PREMISES CONSIDERED, the judgment of conviction is hereby AFFIRMED, with the modification that the civil indemnity is hereby increased to P30,000.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, and Bidin, JJ., concur.

[1] Penned by Judge Jose Ramolete.

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