

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELITO OCAÑA, ACCUSED-APPELLANT.

G.R. No. 63009. January 19, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the decision of the Court of First Instance (now Regional Trial Court), Branch 1, Catbalogan, Samar dated October 15, 1982,[1] convicting the appellant Angelito Ocaña in Criminal Case No. 1963 of murder, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused ANGELITO OCAÑA guilty as principal beyond reasonable doubt of the crime of murder, defined and penalized by Article 248 of the Revised penal Code, there being no aggravating nor mitigating circumstance to consider, sentences the said accused to suffer the penalty of RECLUSION PERPETUA with the accessories of the law, to indemnify the heirs of the victim, Agustin Latorre, the sum of P12,000.00; moral damages in the amount of P20,000.00 and to pay one-half of the costs.

On reasonable doubt, accused HERMOGENES OCAÑA is hereby acquitted, with proportionate costs de oficio.

The bond posted by the two accused for their provisional release is hereby ordered cancelled and their bondsmen are relieved of their obligation therefrom.

SO ORDERED."[2]

In an information dated December 17, 1975, appellant Angelito Ocaña and his co-accused Hermogenes Ocaña, were charged with murder committed as follows:

"That on or about the 7th day of September, 1975 at nighttime, in the Municipality of Villareal, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and helping one another, armed with a firearm and a piece of wood, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, beat and shoot one Agustin Latorre with the aforesaid weapons which the said accused have conveniently provided themselves for the purpose, inflicting upon said Agustin Latorre wounds on different parts of his body which caused directly his death."[3]

Upon arraignment, both Angelito and Hermogenes Ocaña pleaded not guilty to the charge. Trial ensued on July 15, 1976.

The evidence shows that on September 7, 1975, at around 10:00 o'clock in the evening, Tito Josayan, Fernando Varela, Esteban Hermusura, Leticia Echepare, Procopio Varela and Esteban Mabute were drinking "tuba" inside the house of Daniel Maruto who tended a store in Tayod, Villareal, Samar. A little later, Agustin Latorre arrived and entered the house to join them. After taking one of the unoccupied stools, he said angrily: "It is good Esteban (Mabute) who is my enemy is here, Esteban is a traitor to me." Esteban quickly retorted with "Why Agustin, we have no quarrel, why should I be a traitor to you?" Sensing trouble, Esteban edged near Agustin so that when the

latter pulled his firearm from his waist, the two grappled for the possession of the gun. Because of the timely arrival of Esteban's wife and daughter, the protagonists were pacified. Moments later, Agustin Latorre sat down, while Esteban left in a huff. (Agustin Latorre was appointed chief of police of Villareal, Samar in 1968 but was separated from the service for abuse of authority and had been charged with various offenses such as attempted murder, illegal possession of firearms, qualified theft and illegal slaughter).

At around eleven in the evening, Angelito Ocaña, chief of police of Villareal, Samar, entered Daniel Maruto's house to inform Agustin Latorre that Esteban had complained to him about having been threatened by Agustin with a gun. Ocaña then demanded that Agustin go with him, but the latter refused to accede to his demand and told Ocaña to just let Esteban file a complaint. Agustin also asked whether Ocaña had a warrant, prompting the latter to leave the house quickly with the promise that he would secure one immediately.

About fifteen minutes thereafter, Agustin also left. As he came out of the house, he buttoned his shirt with his left hand while his right hand held a flashlight. As he started walking down the one-and-a-half meter long wooden plank connecting Maruto's doorway to the street, prosecution witness Romeo Hermosura, who had just bought cigarettes with his friends Jaime Geli, Jesus Napocon and Isaias Napocon from Maria Daluraya's store along Soledad Street, were smoking on the road in front of Maruto's house. The group saw nearby Angelito Ocaña with Patrolman Blasito Monteclaro and Andresito Cabueños talking in whispers. They also saw Agustin negotiating the plank, directing the beam of his flashlight on the road. Recognizing Romeo Hermosura, Agustin approached him saying: "So it's you, Meo. Please light my cigarette, I am going home, sweet home."

Suddenly, Ocaña pushed Agustin Latorre, causing the latter to stagger backwards to the gumamela bush. The victim focused his flashlight on Ocaña, who however struck Agustin's hand with a piece of cane or "baje," about one (1) meter in length. As the flashlight dropped from Agustin's hand, Ocaña again struck him on the forehead, causing him to slide down the gumamela bush partly in a prone position. Andresito Cabueños who stood behind Agustin shouted: "Kill him because he is a nuisance in our town!" Ocaña then pulled Agustin's right hand, drew his revolver and fired four (4) shots at the victim. At this point, Ocaña called out to other policemen who were huddled at the corner of Soledad and Salome Streets, saying "We have already bagged a pig."

Romeo Hermosura and Jaime Geli approached to lift Agustin's body but Ocaña ordered them to go home. Both fled, but when they reached the corner of Soledad and Salome Streets, Patrolman Santiago Oreo fired his revolver at Geli who almost fainted. Oreo approached Geli and muttered: "I thought you were Laguting" (referring to Agustin), and ordered him to go home.

Hermosura and Geli however went instead to Maria Daluraya's store, borrowed a petromax lamp and returned to the scene of the incident, where they allegedly saw Ocaña putting a revolver with a holster on the victim's waist. They proceeded to the house of the barangay chairman, Doroteo Tamano, to inform him of the incident. The following morning, both executed separate affidavits before Sergeant Gapayao of the Philippine Constabulary. Romeo Hermosura's testimony on trial was corroborated by Jaime Geli and Maximo Daluraya.[4]

That same afternoon, Dr. Marcelino Villavicencio, municipal health officer of Villareal, Samar, autopsied the cadaver and submitted the following autopsy report:

"Head and neck:

1. Lacerated wound - 3 cm. long, 1 cm. wide, bony deep, running obliquely, outer eyebrow, right.

Hematoma, about 2 inches by 2 inches, ear, right, and its surrounding.

Thorax:

1. Wound, gunshot (entrance) roughly oval in shape, .7 in diameter, surrounded by contuse-abraded collar 1 cm. in width evenly distributed around the gunshot wound, located at the anterolateral aspect of the axillary fold right, at the level of the third rib, directed horizontally, medially, anteriorly penetrating the thoracic cavity involving the upper portion of the middle portion of the right lung and upper lobe, left, then making a wound (exit) stellate in shape, 1 cm. x 1.2 cm. located at the antero-lateral aspect of the axillary fold, left.

2. Wound, gunshot (entrance), roughly circular in shape, .7 in diameter, surrounded by contuse-abraded collar 2 cm. in width evenly distributed around the wound at the level of the 8th rib, 1 1/2 inches away from the mid clavicular line, directed upward, obliquely, inwardly, posteriorly, and penetrating the thoracic cavity involving the lower portion of the right lobe, lacerating (sic) the arch of the aorta and middle lobe of the left lungs and out the thoracic cavity where the slug stopped just beneath the skin, medial portion of the left scapula.

Abdomen:

1. Wound, gunshot (entrance) roughly circular in shape, width .7 cm. surrounded by contuse-abraded collar, 3 cm. wide evenly distributed around the wound, located at the mid-clavicular line, 3 inches below the hypochondrium, left directed, downward, inward, posteriorly penetrating the abdominal cavity, involving the left pelvis of the kidney, the 3rd lumbar vertebrae, muscle above the bone the slug stopped.

Coagulated blood - about 600 cc.

Hemorrhage - intrapleural left thorax

Heart and Big Vessels - almost empty

Stomach - filled with partially digested food materials

Cause of death:

Hemorrhage, severe, secondary to gunshot wounds on the thorax."[5]

The doctor also revealed that upon examination, he did not notice any powder burns on the victim's body.

On September 10, 1975, Angelito Ocaña executed an Affidavit stating that upon complaint of Esteban Mabute on September 7, 1975 that he was assaulted with a revolver by Agustin Latorre during a drinking spree inside Daniel Maruto's house, he went with Esteban Mabute to the yard of Daniel Maruto at the Tayod District of Poblacion Villareal, Samar; that when they arrived at the said place, the victim was already leaving Maruto's house and affiant saw him holding his revolver with his right hand; that Ocaña ordered him to surrender his revolver but instead of doing so, he shot Ocaña who luckily was able to duck, thereby constraining him to shoot back at Agustin; that the latter jumped towards him and they grappled with each other; that while exerting all efforts to defend himself, Ocaña pulled the trigger of his revolver rapidly and later discovered that Agustin had been killed; that he called out to his policemen, Patrolman Santiago Oreo, Jr. and Patrolman Sixto Nagpacan, who responded and went to the place of the incident and that they asked for help to bring the cadaver to the municipal building.[6] Ocaña then left for Catbalogan, Samar to attend a conference and at the same time inform the Provincial Commander about the occurrence. Right then and there, he was detained.

On September 20, 1975, Dr. Mariano B. Cueva, Jr., medico-legal officer of the National Bureau of Investigation, upon request of the NBI Regional Director in Tacloban City, exhumed the cadaver of the victim. The Exhumation Report revealed that the victim suffered abrasions and a lacerated wound on the forehead, two gunshot wounds on the right side of the chest (one exiting on the sole of the left foot), and another gunshot wound on the left side of the abdomen, finding shock secondary to multiple gunshot wounds, traumatic injury contributory, as the cause of death.[7] Dr. Cueva also observed that the distance from the muzzle of the assailant's gun to the body was more than two feet, considering the absence of powder burns; that the first two gunshot wounds assume that both victim and assailant were in a standing position, the assailant directly at the right side with a slight variation, one

inflicted frontally and the other from behind; that the third gunshot wound, inflicted when the victim had already fallen, was shot from above because of the bruise on the skin at the back, indicating that it was pressed on something solid, and finally, that all of the victim's gunshot wounds, as well as his head injury, were fatal.

The trial court found the prosecution's theory credible and logical, as against the weakness of that of the defense, particularly as the accused Angelito Ocaña himself admitted the killing, although he invoked self-defense. It noted that there was no necessity for the accused to accompany Esteban Mabute to Maruto's house that night, considering that the nature of the complaint was not that serious and urgent, and the complainant was no longer in danger of being harmed when he went home. So he could have simply advised the complainant to return the following morning to file a criminal complaint. The evidence shows that the accused had even asked Esteban Mabute to look for policemen to accompany him to Maruto's house, all beyond the call of duty. If indeed the deceased, who was a notorious police chief who "knew his gun" really fired his revolver twice at Ocaña, assuming that he had one, the latter could very well have been hit. Moreover, even assuming that Ocaña's demonstration made in open court is true, when they grappled in standing position to retain possession of their firearms, the gunshot wounds on the deceased (who was established as taller and bigger in build than Ocaña) should have landed on some other parts of his body. Moreover, the injuries sustained by the deceased should have been positive for powder burns, contrary to the autopsy and exhumation reports. Furthermore, since the accused admitted having inflicted "only gunshot wounds" and there was no iota of evidence to prove that his co-accused father, Hermogenes Ocaña (a sickly old man retired from public school teaching, night-blind because of an eye disease necessitating the use of colored glasses) was at the scene of the crime at all, then who inflicted the lacerated wounds on Agustin's hand and forehead? Ocaña's statements, being in conflict with the actual physical facts as disclosed by the evidence, could not be accorded much credence by the court a quo.

In this recourse seeking acquittal, appellant alleges that the trial court erred:

- in giving faith and credence to the testimonies of prosecution witnesses Romeo Hermosura and Jaime Geli, alleged eye-witnesses to the incident;
- in convicting him of the crime of murder despite the justifying circumstance of complete self-defense; and
- in finding that the killing was attended by treachery and evidence premeditation despite lack of sufficient evidence.

The appeal is devoid of merit.

Having admitted the killing, the burden of proof is on the accused that he did so in self-defense, by clear and convincing evidence that excludes any vestige of criminal aggression on his part. His account of the incident during trial clearly conflicts with the physical evidence. In his narration, he also offered an explanation on how the first two gunshot wounds were inflicted but he remained silent on the third.

We find that the trial court did not err in giving credence to the prosecution witnesses and in finding the appellant guilty beyond reasonable doubt of murder. Against his positive identification by prosecution, all he offered was the feeble, unsubstantiated claim of self-defense.

In the instant case, we agree that the killing was attended by treachery because the victim was suddenly pushed in the dark by the appellant. The striking of his hand and forehead with a piece of wood and the shooting followed almost instantaneously. So sudden and unexpected was the attack that the victim had no more chance to put up his own defense. From all indications, the mode of attack was consciously and deliberately adopted by the accused to ensure the accomplishment of his criminal objective.[8]

We, however, note that the accused voluntarily surrendered to the Provincial Commander. Such may be

appreciated as an ordinary mitigating circumstance in his favor. Since the penalty for murder[9] is reclusion temporal in its maximum period to death (now up to reclusion perpetua only), and there being one ordinary mitigating circumstance not offset by a generic aggravating circumstance, the penalty to be imposed upon the accused should be the lesser penalty which is reclusion temporal in its maximum period.[10]

The accused, however, may avail of the benefits of the Indeterminate Sentence Law which entitles him to a minimum penalty of prision mayor maximum to reclusion temporal medium,[11] being the range of the penalty next lower than that prescribed by Article 248 of the Revised Penal Code.

WHEREFORE, the appealed judgment is hereby AFFIRMED with the MODIFICATIONS that the penalty to be imposed upon the accused shall be an indeterminate sentence of ten (10) years and one (1) day of prision mayor in its maximum period as minimum penalty, to twenty (20) years of reclusion temporal as maximum penalty, together with all the accessory penalties provided by law; and that the death indemnity shall be increased to P50,000.00, consistent with existing jurisprudence.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] Penned by District Judge Wenceslao M. Polo; Rollo, pp. 126--156.

[2] Rollo, pp. 35-36.

[3] Rollo, p. 126.

[4] TSN of July 15, 1976, pp. 305-331 and December 10, 1976, pp. 385-398.

[5] Exhibit "C" for the prosecution.

[6] Exh. "L" for the prosecution.

[7] Exhibits "N" to "N-2."

[8] Art. 14, par. 16, Revised Penal Code; *People v. Castro*, G.R. No. 93664, December 11, 1992, 216 SCRA 410; *People v. Cordero*, G.R. No. 97229, January 5, 1993, 217 SCRA 1.

[9] Art. 248, Revised Penal Code.

[10] Art. 63, par. 3, Revised Penal Code.

[11] Art. 61, par. 3, Revised Penal Code.

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