

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CASTULO CORECOR, ACCUSED APPELLANT.

G.R. No. 63155. March 21, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Leyte, Branch IV, finding the accused Castulo Corecor guilty beyond reasonable doubt of the crime of murder and sentencing him to reclusion perpetua, "to indemnify the heirs of the deceased Juanito Potoy, (sic) without subsidiary imprisonment in case of insolvency, and to pay the costs."

The information filed against the accused alleged:

"That on or about the 12th day of April 1978, in the Municipality of Jaro, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously shoot and wound one JUANITO POTOY with the use of a nomemade unlicensed firearm, which the accused had provided himself for the purpose, thereby hitting and inflicting upon the said Juanito Potoy several gunshot wounds which caused the death of the said Juanito Potoy immediately thereafter.

"CONTRARY to law." (p. 5, Rollo)

The prosecution's evidence upon which the finding of guilt beyond reasonable doubt is based was summarized by the lower court as follows:

"Upon due consideration of the evidence the court finds the accused Castulo Corecor guilty beyond reasonable doubt of the crime of murder qualified by treachery. He deliberately sought out the deceased and shot him. His act in killing the deceased in the manner described by the wife of the victim is murder. Mrs. Sinforosa Laure Potoy testified as follows: At about 6 o'clock in the evening of April 12, 1978, Avelino Ragas, who was courting his (sic) daughter Elisa Potoy, went to their house in Kalinawan, Jaro, Leyte. To while away their time her husband Potoy and Avelino Ragas drank tuba in the kitchen. Her daughter Elisa slept early. Elisa went to bed about 7 o'clock. At about nine o'clock a shot rang from under their house. She saw her husband holding his left breast apparently hit by the shot. She at once got their flashlight, ran to the window of their house and looked for the assailant of her husband. She saw Castulo Corecor running away on a trail leading to his place of residence in Barangay Daro with a long gun. Avelino Ragas armed himself with a bolo and tried to chase the assailant but finding the assailant no longer in the vicinity he went back. Juanito Potoy died instantly. Mrs. Sinforosa L. Potoy then instructed Avelino Ragas to notify the police. At about 10 o'clock Patrolman Perfecto Villamor and Fortunato Lego and Cpl. Benito Navarra arrived and investigated her. The next day, April 13, the dead body of Juanito Potoy was examined by Municipal Health Officer Prudencio Fevidal.

"Mrs. Potoy told the court that Castulo Corecor was courting her daughter; Elisa, who was then 18 years old; that sometime in 1976 while Elisa was alone with her two young children and she and her husband were in the farm Castulo went to their house and molested Elisa by holding her private parts. The parents of Castulo asked

forgiveness for the lascivious act of Castulo and he was forgiven; that Castulo shot her husband because he disapproved defendant's courtship to his daughter; that her husband objected to the courtship because his daughter Elisa and Castulo Corecor are cousins." (pp. 11-12, Rollo)

Appellant Corecor raised the following assignment of errors in his appeal:

I

"THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE OF THE ACCUSED-APPELLANT.

II

"THE COURT A QUO GRAVELY ERRED IN GIVING MORE WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION AND IN TOTALLY DISREGARDING THE EVIDENCE OF THE DEFENSE.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER." (p. 75, Rollo)

The accused raises the plea of self-defense.

As held in the case of *People v. Picardal*, G. R. NO. 72936, June 18, 1987:

"x x x It is a well-established principle that where the accused has admitted that he is the author of the death of the deceased, it is incumbent upon the appellant, to avoid criminal liability, to prove this justifying circumstance claimed by him - self-defense - to the satisfaction of the court. To do so he must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if that were weak it cannot be disbelieved after the accused himself has admitted the killing (*People v. Ansoyon*, 75 Phil. 772 [1946]; *People v. Silang Cruz*, 53 Phil. 635 [1929]). Otherwise stated, the burden of proof is shifted from the prosecution to the accused and it is the duty of the latter to establish self-defense by evidence clear and convincing (*People v. Valencia*, 133 SCRA 82 [1984]; *People v. Urbistondo, et al.*, 132 SCRA 268 [1984]; *People v. Pasco, Jr.*, 137 SCRA 137 [1985]).

"Thus self-defense, being an affirmative allegation, it is incumbent upon the accused to prove clearly and sufficiently its elements, otherwise the conviction of the accused is imperative (*People v. Plandez*, 132 SCRA 69 [1984]).

"The three requisites of self-defense and defense of relatives and strangers as stated in par. 1 of Article 11 of the Revised Penal Code are as follows: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself."

The accused Corecor contends that all these requisites of self-defense are present in the instant case. Their alleged presence is based solely on the testimony of the accused-appellant.

The claim of self-defense cannot be sustained.

We accord respect to the lower court's findings which are supported by the records. The lower court observed as follows:

"Defendant's theory of self-defense cannot be given credence. The accused Castulo Corecor gave his version of the incident: He is from Barangay Daro, Jaro, Leyte. In 1977 he courted Elisa Potoy. They became sweethearts. At about 8:30 in the evening of April 12, 1978 he visited Elisa. He asked Avelino Ragas to accompany him because his place is far and he is afraid to travel alone at night. To announce his arrival he

sang 'Ang Tangi Kong Pag-ibig.' The song was not completed because Juanito Potoy then expressed his desire to fight his enemy one 'Gumer'. He advised Juanito Potoy to calm down. Juanito rebuked him saying that he (accused) belongs to another family and has no reason to interfere in his own affairs. Juanito then got inside their bedroom and got a home-made shotgun and threatened to shoot him. Instinctively, he stood up and wrested the gun from Juanito. He wanted to get out but the doors were closed. Determined to kill him, Juanito Potoy got another gun from his bedroom. Sensing danger to his life he faced the deceased and shot him. Thereafter, he left the home-made shotgun wrested by him from Juanito Potoy and went home. He surrendered the next day to Barangay Captain Pastor Lego.

"A trivial cause may possibly provoke a man to assault another person. It is unlikely in this case. It is hard to believe that the deceased who was 24 years older than him and a former barrio captain would go to the extent of shooting a young man just because the latter advised him to desist from seeking out his enemy. Moreover, Avelino Ragas was his rival. It is preposterous to say that Avelino who was also courting Elisa accompanied him to her house. Elisa denied having accepted the love of accused Castulo Corecor. She told the court that Castulo courted her but she did not accept him because they are relatives and she felt no love for him. She declared that Castulo was not one of their visitors in the evening of April 12, 1978. (pp. 12-13, Rollo)

x x x x x x x x

"The accused claims that after shooting Juanito Potoy with a home-made shotgun wrested by him he left the gun in the house of the deceased and he went home. This story is inconsistent with the testimony of Patrolman Perfecto Villamor who declared that the gun in question was surrendered by defendant's mother to him in the morning of April 14, 1978. The defense failed to present evidence that this gun belongs to the deceased. This fact together with the circumstance that it was accused, not the deceased, who had greater motive for committing the crime the deceased having objected to his courtship to Elisa leads to the conclusion that defendant's self-defense plea is really untenable." (p. 14, Rollo)

The version of the appellant is not only diametrically opposed to that of the prosecution but has no basis in the records.

We have carefully studied the records of this case and we find no reason to deviate from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses are generally accorded respect because of its privilege of examining the demeanor of the witnesses as they testify. (People v. Aboga, 147 SCRA 404)

The appellant casts doubt on the credibility of the prosecution witnesses by alleging contradictions in their testimonies. However, as noted by the Solicitor General, this allegation is a mere sweeping statement as only one alleged inconsistency was pointed out by the appellant.

The accused questions the inconsistency as to who surrendered to the police the gun used in the killing.

Pat. Perfecto Villamor in a direct examination testified:

"COURT:

How did you know that fact?

"A I was the one to whom the mother surrendered the gun in question.

"Q What is the name of the mother of Castulo Corecor who surrendered the homemade shotgun to you?

"A She is known by the name of Tansing. I cannot remember her real name." (TSN, p. 71)

On the other hand, Villamor later on testified:

"COURT: (to the witness)

"Q

Pat. Villamor, you were called again because of the information that the shotgun in question was surrendered by the mother of accused Castulo Corecor soon after the commission of the crime, what can you say about this?

"A The firearm in question was surrendered to the barangay captain of Kalinawan, Jaro, Leyte.

"Q What is the name of the barangay captain of Kalinawan, Jaro, Leyte?

"A Pedro Lego.

"Q When did Pedro Lego surrendered the gun to the Police Station?

"A The gun in question was surrendered by Brgy. Capt. Pedro Lego to the police department on April 14, 1978 at 6:08 in the morning.

"Q To whom did Pedro Lego surrender the gun?

"A I was the one who received the firearm in question. (TSN, p. 20)

There is actually no contradiction as Pat. Villamor testified on cross-examination that Francisca Pore, the mother of the accused was with Brgy. Capt. Pedro Lego when they surrendered the said gun to him.

The failure to immediately mention the barangay captain is only a minor detail that does not affect credibility as it only refers to a collateral matter which does not touch on the commission of the crime itself. (See *People v. Ibal*, 143 SCRA 317)

In view of the foregoing facts, we hold that the guilt of the accused-appellant Corecor has been established beyond reasonable doubt.

WHEREFORE, the judgment appealed from is **AFFIRMED** except that the penalty imposed is hereby **MODIFIED** in that the accused Corecor shall suffer an indeterminate penalty of **TEN (10) YEARS and ONE (1)**

DAY of prision mayor as minimum, to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum due to the presence of the mitigating circumstance of voluntary surrender (People v. Masangkay, G. R. NO. 73461, January 25, 1988), and shall indemnify the heirs of Juanito Potoy the sum of THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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