

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SILVINO VILLANUEVA Y TRINIDAD, VICENTE AGGABAO Y DATUN, ALEXANDER DOMINGO Y MARIANO AND JOHN DOE, ACCUSED, SILVINO VILLANUEVA_...

G.R. No. 65483. May 25, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The trial court took judicial notice of the fact that the moon was almost full on the night of June 14, 1981, when the incident in question happened.[1] The full moon shone on June 16. There is no showing that the weather was stormy or that the skies were cloudy or that the moon did not appear two nights before. This is important because the prosecution claims that the night was bright. The defense insists that it was dark.

The light of the moon was only one of the several points disputed by the parties in this case. There were other issues more prosaic and probably even more important. In the end, after assessing the evidence in their totality, the trial court[**] sustained the charge against the accused-appellant and found him guilty of murder. Vicente Aggabao and Alexander Domingo, his co-defendants, were acquitted.[2]

Silvino Villanueva is now before us, protesting his innocence and asking for a reversal of his conviction. His plea, basically, is that it was all an accident.

The accident he refers to is the killing of Pedro Acosta on June 14, 1981, at about eleven o'clock in the evening, in Diffun, Quirino Province. As the trial court found it, the victim, accompanied by Rodolfo Tangunan, Clemente Salvador and Primo Clemente, were on their way home when they were intercepted by Villanueva, his two co-accused and a fourth still unidentified person. They were all security guards in the National Irrigation Administration. Villanueva carried a shotgun and both Aggabao and Domingo had wooden clubs. Acosta's group turned back and ran and Villanueva's group gave chase. Villanueva fired and felled Acosta.[3] Tangunan stopped to aid his stricken friend but changed his mind when Villanueva reloaded his shotgun and pointed it at him.[4] Later, Juan Jose, the supervisor of the security guards, reported to the police that Acosta had been shot while attempting to steal a battery at the NIA compound.[5] Pat. Archibald Afan led a team that went to the scene of the shooting and noticed, as he later testified, that the victim's hands were clean although the battery near his head was dirty.[6] It was a heavy-duty battery, about two feet long and ten inches wide, and could not have been carried alone by the victim.[7] Afan also noted a trail of blood which suggested that the victim's body had been dragged into the compound some one-hundred fifty meters from where he had presumably been shot,[8] possibly to make the story of the attempted stealing more plausible. He found in the spot the empty shell of a 12-gauge bullet.[9] Villanueva surrendered to him a 12-gauge shotgun and admitted that he had shot the victim.[10] Afan twice unloaded the gun, extracting therefrom another empty shell and a live bullet[11] Afan's companions took Acosta to the hospital where he expired.[12]

Acosta's body was autopsied hours after his death but, significantly, was exhumed after seven months for

another/josf-mortem examination. The reason was that the first examiner, Dr. Gaudencio Acosta, chief of the Marcos Memorial Hospital, who was supposed to be a witness for the prosecution, testified against it in effect. His testimony was that the lacerated wounds sustained by the victim in the head were caused by a blunt instrument and not by a gun, and that he found no powder burns on the victim and no bullets in the skull although there were no exit wounds.[13] This finding was refuted later by Dr. Ruben Angobung, regional medico-legal officer of the National Bureau of Investigation, who conducted the second examination. His opinion was that the wounds were inflicted by simultaneous gunshots, possibly from a shotgun or an air rifle.[14] This conclusion was supported by Ireneo Ordiano, a ballisticsian of the NBI, who testified that the lead fragment found inside the victim's skull during the second examination was part of a bullet that had passed through the barrel of a firearm.[15]

While insisting on the first autopsy report, the accused-appellant later adopted another theory which negated his claim that the victim's lacerated wounds could not have been caused by a blunt instrument. This was what he called the accidental shooting of the victim. As he put it, the misunderstanding between them and Acosta's group began when the latter mauled Aggabao while he was buying cigarettes at a nearby store. The guard ran for safety to the NIA compound,[16] and Villanueva fired a shot in the air to warn the pursuers, who desisted and withdrew. But to avoid further trouble, Jose, the supervisor, Villanueva, and Aggabao went out to talk to Acosta's group and negotiated a settlement.[17] He claims, however, that when they were in their way back to the compound, they were ambushed in the dark and Acosta suddenly grabbed Villanueva's rifle, which accidentally went off while they were grappling for it. Acosta was hit in the head.[18] This defense refuted the earlier version offered by Jose that Acosta had been shot in the compound while attempting to steal a battery.

The Court is of the impression that the accused-appellant is desperately grasping at straws to escape the consequences of his unlawful act. The original story of the attempted theft was palpably concocted and plainly contradictory and was correctly rejected by the trial court as a mere cover-up. The second story is no less believable. Testifying on this alleged accident, the accused-appellant was confused and evasive, saying first that he was not sure Acosta was shot when they were struggling for the gun[19] and saying next, almost in the same breath, that "he was the only one who was shot,"[20] Villanueva said he could not remember if his finger was on the trigger of the gun and also if it was on "safe" or not.[21] He also could not say if he actually pulled the trigger.[22] Even his co-accused and corroborating witness, Aggabao, and Jose as well, were indefinite about the incident, claiming it was too dark at the time to identify the person who had tried to grab the firearm from Villanueva.[23]

There is one point, however, that deserves special attention, and that is the physical fact that Acosta was shot not in the back of his head but while he was facing the killer. Both Dr. Acosta and Dr. Angobung, while differing sharply on their conclusions as to the cause of the wounds, agree on this particular finding. The question then is: If it is true that the victim was shot while he and his companions were being chased by Villanueva's group, why were the wounds inflicted not at the back of the head but in front?

Rejecting the accident version of the defense and accepting the prosecution theory of how the offense was committed, we can find only one plausible explanation for this seeming inconsistency. The Court believes that while Acosta was running for his life, he looked back at his pursuers, perhaps to see how near they were, and it was at that precise moment — when he stared at death in the face, so to speak — that Villanueva fired the fatal shots.

Considering Villanueva's categorical admission that he had shot Acosta, albeit accidentally, as he insists, there is not much need to dwell on the conflicting reports of the medical examiners as to how the victim's injuries were caused. It is worth mentioning, however, that the entrance point of a gunshot wound is not necessarily always

round, its shape being dependent on the type of weapon used and the distance from which the shot is fired.[24] Thus, according to some authorities,[25] the gunshot wound would be irregular in shape, or lacerated, where the firearm is fired from a distance of more than a yard. This same distance would also explain the absence of gunpowder burns on the victim as noted by Dr. Acosta. As for the missing bullets, the lead pellet found in the victim's skull during the second examination was, as earlier noted, identified as having come from a firearm. The second bullet, according to Dr. Angobung, must have been lost during the first autopsy.[26]

The trial court correctly rejected the allegation of evident premeditation but held that there was treachery to qualify the killing to murder. We do not agree. According to Article 4, par. 16, of the Revised Penal Code, there is treachery "when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from any defense which the offended party might make." From the facts found by the trial court, it does not appear to us that Acosta and his companions were completely caught off-guard when the accused-appellant and his companions started chasing them. The attack against Acosta was not unexpected; in fact, he was running away from it; and in any case, there was sufficient warning when Villanueva's group confronted them in a menacing manner, and with weapons. Moreover, it has not been established that Villanueva consciously adopted such mode of attack to facilitate the commission of the offense without risk to himself. On the contrary, the Court believes that the shooting was done on impulse whetted by the excitement of chase and was not the result of earlier deliberation. It is more reasonable to suppose that the security guards were armed because this was required by their duties or, if it was not, more for the purpose of frightening or intimidating the other group than anything else.

We find that the crime committed by the accused-appellant was homicide without any aggravating or mitigating circumstance. The prescribed penalty is rec/usion temporal in its medium period but applying the Indeterminate Sentence Law, we hereby sentence him to ten years and one day as minimum and seventeen years and four months as maximum. The civil indemnity is increased to P30,000.00.

WHEREFORE, the judgment appealed from is AFFIRMED as thus modified, without any pronouncement as to costs. It is so ordered.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Decision, p. 43.

[**] Judge Rodolfo G. Hermoso, RTC. Branch 31, Cobarroguis, Quirino Province.

[2] Decision, p. 46.

[3] Ibid., p. 38.

[4] TSN, Dec. 17. 1981. p. 10.

[5] Decision, p. 40. 6TSN. Jan. 13. 1982. pp. 51-52.

[6] TSN, Jan. 13, 1982, pp, 51-52.

[7] Ibid., pp. 50-51.

[8] Id., pp. 51-53.

[9] Id., p. 58

[10] Id., p. 61.

[11] Id.

[12] Id., p. 69.

[13] Id.. Jan. 14, 1982. pp. 96-100.

[14] Id.. June 10. 1982. pp. 185-190

[15] Id.. July 20. 1982. pp. 214-215.

[16] Id.. Dec. 7. 1982. pp. 237-239.

[17] Id., p.243.

[18] Id., pp. 245-248.

[19] Id., p. 250.

[20] Id.

[21] Id., March 10, 1983. pp. 268-271

[22] Id., Dec. 7. 1982. p. 248.

[23] Id., May 16, 1983, p. 339; Id.. April 12. 1983. p. 306.

[24] Alfred W. Herzog, Medical Jurisprudence, p. 241; Douglas Kerr, Forensic Medicine, 5th Ed., p. 140.

[25] Wharton & Stille's Medical Jurisprudence, Vol. 3, 5th ed., p. 107; Glaister & Rentouls Medical Jurisprudence & Toxicology. 12th ed., p. 249.

[26] TSN. June 10. 1982, p. 199.

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