

ADELINO MONTANEZ Y ROSAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 72199. November 29, 1989

Ponente: PARAS, J.

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PARAS, J.:

Petitioner presents to Us for review the Decision dated July 8, 1985 of the Court of Appeals in AC-G.R. No. 00730 affirming, with modifications as to damages and penalty, the decision of the then Court of First Instance of Rizal, Branch X at Quezon City. The trial court decision found herein petitioner guilty beyond reasonable doubt of the crime of homicide.

This petition for review on certiorari was filed on November 8, 1985. (p. 7, Rollo)

We adopt the facts as narrated in the People's brief and found by the Court of Appeals to be substantially supported by the records. Thus -

"Between 9:00 and 10:00 o'clock in the evening of May 26, 1977, a certain Totoy or Jose Agosto Labayo was standing beside a jeep near Aling Loleng's Store at Montalban St., Pansol, Balara, Q. C., when Adelino Montanez approached him.; Montanez was accompanied by Ricardo Cayanong (pp. 7, 9-10, tsn, Sept. 22, 1977). Montanez poked his gun at Totoy, specifically very near the latter's right nipple. Cayanong also had a gun which was drawn and pointed at Totoy. While his gun was thus aimed at Totoy, Montanez remarked, 'sabihin mo lamang na papuputukin ko ito at papuputukin ko' (you tell me if I will fire this and I will do it). Totoy replied, 'hindi baleng paputukin mo, basta wala akong kasalanan' (never mind if you fire the gun, anyway I have no fault). Montanez then fired (p. 14, tsn, October 6, 1977) and Totoy slumped, after which Montanez told Cayanong, 'Tara na, pare, patay na 'yan (Let's go, he's dead already).

"The two then ran away towards the NWSS compound at Balara (pp. 14-18, 20-21, 24, 40, tsn, Sept. 22, 1977). Montanez and Cayanong were actually security guards at the Balara compound (p. 28, tsn, Id.). Both were in their uniforms at the time of the shooting (pp. 44-45, tsn, Id.).

"It appears that before the shooting happened, somebody threw stones at Montanez and the latter suspected Totoy to have done it (pp. 29, 38-39, tsn, October 6, 1977; pp. 22, 26, 49, tsn, Nov. 10, 1977). Montanez was also drunk at the time he shot Totoy (p. 44, tsn, Id.).

"An autopsy was made on the body of Jose 'Totoy' Agosto on May 27, 1977 at 11:45 o'clock in the morning by Dr. Nieto M. Salvador, medico-legal officer of the National Bureau of Investigation (pp. 65-66, 71, tsn, Feb. 16, 1978). His Necropsy Report (Exh. K) showed that the victim sustained a gun-shot wound on the front aspect, right side of the chest which measured around 1 x 9 cms. in diameter. The edges of the wound were everted and around these everted edges was gun powder smudge. The presence of the gun powder smudge indicated that the shooting was a 'contact fire' i.e., that the gun was close to the entrance of the bullet. Based on the measurements of the entrance and exit wounds, the bullet would have a caliber of around .22 to .38 caliber. The bullet completely perforated the aorta or the main blood vessel which supplies the whole system of the body, thus, even if the victim was properly attended to, he would not have survived. The immediate cause

of death was hemorrhage, acute, severe, secondary to gunshot wound of the chest (pp. 65, 66, 71-72, 75-82, tsn, Id). Investigation conducted by Det. Antonio Sabino revealed that the gun that was fired belonged to Montanez (pp. 12, 4-5, tsn, Sept. 8, 1980).

"At the time of his death, Totoy was working as mechanic driver and earning P300.00 a month for a period of almost five years. For his funeral expenses excluding the cemetery lot, his mother spent P4,300.00 plus P900.00 as interment expense, and others for the wake and transportation. And for filing the case against Totoy's assailants, his mother contracted to pay attorney's fees of P4,000.00. Totoy's death brought untold sorrow to his mother who was initially shocked to hear of her son's sudden death (pp. 3, 9-19, tsn, November 9, 1977). (pp. 3-5, appellee's brief) (pp. 42-43, Rollo)

The City Fiscal of Quezon City filed an information in the then Court of First Instance of Rizal, Branch X at Quezon City, charging Adelino Montanez y Rosas and Ricardo Cayanong y Suganon with the crime of homicide allegedly committed as follows:

"That on or about the 25th day of May 1977, in Quezon City, Philippines, the above-named accused, conspiring with his co-accused, confederating with and mutually helping each other did, then and there, willfully, unlawfully, and feloniously with intent to kill, attack, assault and employ personal violence upon one JOSE AGOSTO Y LABAYO, by then and there shooting him at his chest, thereby inflicting upon said JOSE AGOSTO Y LABAYO serious and mortal wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Jose Agosto y Labayo in such amount as may be awarded to them under the provisions of the Civil Code, by way of actual and other damages." (p. 40, Rollo)

The accused-petitioner entered a plea of not guilty on arraignment and after trial on the merits, the Regional Trial Court of Quezon City rendered a decision on July 20, 1983, the dispositive portion of which reads thus:

"PREMISES CONSIDERED, the Court finds ADELINO MONTANEZ Y ROSAS guilty beyond reasonable doubt of the crime of Homicide but considering the circumstances surrounding the said killing as mitigated and hereby sentences the said accused to a penalty of SIX (6) YEARS and ONE (1) DAY OF PRISION MAYOR as the minimum to EIGHT (8) YEARS OF PRISION MAYOR as the maximum. Insofar as accused Ricardo Cayanong is concerned, the evidence does not warrant conviction as it is not sufficient to prove beyond reasonable doubt his guilt and considering further that conspiracy was not duly proven, the said accused (Cayanong) is hereby ACQUITTED of the crime charged. Accused Adelino Montanez is hereby ordered to pay Alicia Agosto, mother of the victim, the sum of 12,000.00 due to the latter's death and P9,900.00 representing actual damages corresponding to the expenses incurred during the wake, vigil and interment of victim Agosto, without subsidiary imprisonment in case of insolvency."

Petitioner appealed the aforesaid decision to the Court of Appeals which affirmed the same with certain modifications and also denied reconsideration of subject decision in its Resolution of September 18, 1985.

Petitioner thus resorted to this petition.

Petitioner now assails the Court of Appeals for having committed these errors:

1. The Court of Appeals erred in adjudging Montanez guilty of the crime of homicide despite the prosecution's failure to prove his guilt beyond reasonable doubt.
2. The Court of Appeals erred in not sustaining Montanez's plea of self-defense.
3. The Court of Appeals erred in declaring admissible Montanez's extracted extrajudicial admission in violation of his Miranda rights.
4. The Court of Appeals erred in not crediting Montanez with the mitigating circumstance of voluntary surrender.

We cannot find merit in petitioners averments; more so because respondents' case has been well and ably buttressed by the Solicitor General. Nor are we inclined to disturb the findings and conclusion of the respondent appellate court. Certain facts have thus been competently and sufficiently established.

It should be noted that petitioner-accused never denied that the fatal shot came from his gun. The investigation conducted by Det. Antonio Sabino revealed that the gun fired belong to Montanez. In his testimony, Det. Sabino was positive that it was the gun of petitioner which fired since it smelled of gunpowder immediately after the shooting. (tsn, September 8, 1980, pp. 4-5).

Petitioner's claim of self-defense and his version that while he was struggling and grappling with the victim for the gun, it went off hitting the victim, are categorically discredited by his co-accused Cayanon who denied that he ever saw the victim with a knife nor that he ever told petitioner to run because the victim was allegedly advancing with a knife. It must be noted that there was not even an attempt on the part of petitioner to support his theory of self defense by producing in evidence the alleged knife. How could he when there was no such weapon.

Significantly, the Necropsy Report of Medico-Legal Officer of the NBI negates the theory of self-defense. For, the Report indicated that the Victim sustained a gun-shot wound on the front aspect, right side of the chest which measured around 1 x 9 cms. in diameter. The edges of the wound were everted and around these everted edges was gun powder smudge. The presence of the gun powder smudge indicated that the shooting was a "contact fire" (that the gun was close to the entrance of the bullet).

On petitioner's averment that the varying testimonies of the prosecution witnesses relating to the statement he uttered before the shooting incident should not have been given credence by the trial court. We quote, as the Court of Appeals did, the well-considered refutation by the Solicitor General. Thus -

"The varying testimonies' alluded to by appellant refer to the statement uttered by him before the shooting incident as testified to by the prosecution witnesses. Prosecution witness Fernando Abano testified in court that appellant said, "sabihin mo lamang at papuputukin ko ito." However in his sworn statement to the police it appears that what he said he heard was "sumagot ka lamang ng oo, titirahin kita." And when asked in court to clarify which statement he really heard that appellant say, Abano said, "Sumagot ka lamang ng oo, papuputukin ko." We submit that the three statements given by Abano as above shown, do not necessarily vary or differ in substance as to make him an incredible witness. Inconsistencies which refer to minor details are badges of truth (People v. Paculba, 124 SCRA 383).

Thus, too, this Court declared in the case of People v. Sarol (139 SCRA 127) that the issue is really one of credibility of witnesses and we need only reiterate the fundamental rule: "In raising the issue of which version to accept and believe, petitioner has to content with the oft-repeated fundamental rule in criminal as well as civil cases that in the matter of credibility of witnesses, the findings of the trial court are given great weight and the highest degree of respect by the appellate court. The reason of course, is that the trial court is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial."

Finally, in the case of People v. Naz (138 SCRA 426) this Court held that: "In an attempt to discredit the testimony of the witnesses for the prosecution, counsel for the appellant pointed to some inconsistencies and contradictions in their testimony which he believes militate strongly against the credibility of said witnesses. The contradictions and inconsistencies, however, refer to minor details which would not impair their credibility."

Considering the foregoing, the judgment appealed from is hereby AFFIRMED, with the modification that the penalty is hereby modified to six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum and the indemnity increased to P30,000.00.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, (Chairman), J., on leave.

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