

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIC LORETO GAPASIN, PC NICANOR SALUDARES, LORENZO SORIANO, ALIAS “OLIT”; AMOR SALUDARES, FRANK SALUDARES, BEL SALUDARES, AND N...

G.R. No. 73489. April 25, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch XVI, Isabela in Criminal Case No. IV-781, finding appellant guilty beyond reasonable doubt of murder qualified by treachery, with the attendance of the mitigating circumstance of voluntary surrender, and the aggravating circumstances of taking advantage of public position and evident premeditation. The trial court sentenced him to suffer the penalty of reclusion perpetua and to pay to the heirs of the late Jerry Calpito, Sr., the sum of P88,596.00 as actual or compensatory damages; P30,000.00 as death indemnity; P20,000.00 as moral damages; P30,000.00 as exemplary damages; and the costs.

I

The information in Criminal Case No. IV-781 reads as follows:

"That on or about the 6th day of October, 1979, at Barangay San Jose, municipality of Roxas, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the accused CIC LORETO GAPASIN, PC NICANOR SALUDARES, LORENZO SORIANO alias Olit, AMOR SALUDARES, FRANK SALUDARES, BEL SALUDARES, and NICK SALUDARES, conspiring and confederating together and all helping one another, with evident premeditation and treachery, did then and there willfully, unlawfully, criminally and feloniously, with intent to kill, attack and shoot Jerry Calpito, with an Armalite rifle SN No. 3267485 Cal. 5.56 duly issued to the accused PC soldier under Memorandum Receipt dated September 17, 1979 by the 118th PC Company, inflicting multiple gunshot wounds on the body of the latter, step and kick (sic) the victim several times, causing his instantaneous death due to hemorrhage secondary to gunshot wounds, to the damage and prejudice of the heirs of the deceased Jerry Calpito in the amount of P12,000.00, Philippine Currency.

That the crime was committed with the aggravating circumstances of (1) ignominy, the accused having stepped and kicked the body of the deceased; (2) abuse of superior strength, and (3) taking advantage of public position, with respect to the accused CIC Loreto Gapasin who is a PC soldier" (Rollo, pp. 35-36).

A warrant for the arrest of all the accused was issued on December 14, 1980. However, as of January 10, 1980, only Nicanor Saludares and appellant had been arrested. On January 17, 1980, the trial court granted the petition for bail of the two accused and fixed the same at P20,000.00 each. Having posted bail, Nicanor Saludares was ordered released on January 22, 1980. On the other hand, appellant was ordered by the court to remain in the custody of Capt. Alexander M. Bellen, commanding officer of the 118th Constabulary Company, in Roxas,

Isabela.

On February 4, 1980, Frank, Bel and Amor, all surnamed Saludaes, were arrested. Lorenzo Soriano, alias Olit, was arrested the following day. They were all allowed to post bail bonds in the amount of P20,000.00 each and thereafter they were released from custody.

On the strength of LOI No. 947, as amended by LOI No. 1011, vesting jurisdiction on the Military Tribunals of all crimes against persons and property committed with the use of unlicensed firearms, the provincial fiscal filed a motion praying that Criminal Case No. IV-781 be transferred to the Military Tribunal and that the bail bonds posted be cancelled. The prosecution reiterated the motion in a manifestation dated August 21, 1980.

Accordingly, on August 27, 1980, the trial court ordered: (a) the cancellation of the bail bonds of the accused; (b) the issuance of the warrants of arrest for all the accused except for Nicanor Saludaes, who was reported to have died; (c) the turn over of appellant to the Provincial Warden of Isabela as he was not entitled to technical rearrest under Executive Order No. 106; (d) the turn over to the said Provincial Warden of all the other accused upon their rearrest; and (e) thereafter, the turn over of the case and the accused to the Military Tribunal thru the Provincial Commander of the PC/INP, Ilagan, Isabela for further proceedings.

Pursuant to the endorsement dated September 19, 1980 of Lt. Col. Oscar M. Florendo, Isabela Provincial Commander, appellant, together with Lorenzo Soriano, Amor Saludaes and Bel Saludaes, was rearrested; while Nick and Frank Saludaes remained at-large. On September 29, 1980, the trial court ordered the dismissal of the case against Nicanor Saludaes on account of his death on June 7, 1980.

The accused, however, filed a motion for the reconsideration of the Order of August 27, 1980 on the grounds that the case was not covered by LOI No. 947, the crime having been committed on October 6, 1979 or several days before the issuance of said LOI. The trial court denied their motion.

By virtue of General Order No. 69 dated January 12, 1981, the records of the case were transferred back to the trial court from the Military Tribunal. On April 1, 1981, the prosecution moved for the recommitment of the accused to the provincial jail. The defense opposed the motion fearing retaliation from a provincial jail guard, who was a relative of the victim. On May 12, 1981, the trial court denied the motion and set the arraignment of the accused on June 1, 1981.

On May 18, 1981, Col. Florendo informed the trial court that Bel and Amor Saludaes have escaped from the Rehabilitation Center of the Provincial Command on April 10, 1981.

On May 29, 1981, the provincial fiscal moved for the reconsideration of the Order of May 12, 1981, alleging that the accused were not actually detained at the PC Headquarters and that, except for appellant, the accused have absconded. Hence, to prevent a miscarriage of justice, the provincial fiscal prayed for the recommitment of accused Soriano and appellant at the provincial jail and for the issuance of the warrants of arrest for Amor, Bel and Frank Saludaes.

The trial court granted the motion and issued warrants of arrest. Despite diligent efforts, however, the other accused were not rearrested and hence, trial proceeded against accused Soriano and appellant only. On June 1, 1981, they both pleaded not guilty.

Two years later, on June 1, 1983, the trial court denied appellant's application for bail but granted that of accused Soriano, whose bail bond was fixed at P30,000.00. Being so persistent, appellant filed a second motion for bail, which was denied by the trial court on June 1, 1984. He filed a third motion to fix bail, which was likewise denied.

Relying on the provisions of Section 4 of P.D. No. 1850, appellant filed an urgent motion praying that he be transferred to the custody of Col. Alfonso M. Mesa, then Provincial Commander of Isabela. The trial court denied the motion. His motion for reconsideration having been denied, appellant filed a petition for certiorari before the then Intermediate Appellate Court, alleging that the trial court acted with grave abuse of discretion in refusing to apply Section 4 of P.D. No. 1850. The appellate court granted the petition and ordered the immediate transfer of appellant to the custody of his military commander.

Meanwhile, accused Frank Saludaes was arrested and he entered a plea of not guilty at his arraignment. He was later allowed to post bail. Since Soriano and Frank Saludaes were both out on bail, the defense opted to present evidence on behalf of appellant only and to submit the case for decision as soon as possible. Thus, after almost six years, trial on the case ensued.

II

According to prosecution witness Alberto Carrido, he and Rodrigo Ballad left the house of Enteng Teppang at about 2:00 P.M. of October 6, 1979 after attending the "pamisa" for the deceased father of Teppang. Jerry Calpito followed them. While they were walking along the barangay road, Calpito was shot by appellant with an armalite rifle. When Calpito fell on the ground, appellant fired more shots at him. Thereafter, accused Amor Saludaes planted a .22 caliber revolver on the left hand of Calpito. Upon hearing the shots, Faustina Calpito ran to succor her fallen husband.

Accused Nicanor Saludaes pointed his gun at Faustina while accused Soriano fired his gun upwards. Saludaes warned that he would kill any relative of Jerry Calpito who would come near him. Faustina and the other relatives of the victim scampered away as the Saludaes' group chased them.

The body of Calpito was autopsied by Dr. Bernardo Layugan, who found that the victim sustained four bullet wounds: (1) on the right lateral side of the arm fracturing the humerus; (2) on the right lateral side of the thorax between the 7th and 8th ribs with exit wound at the sternum; (3) on the left side of the thorax, anterior, between the 5th and 6th ribs; and (4) on the right fronto-parietal portion of the head "severing the skull and brain tissues" (Exh. "F"). Dr. Layugan opined that the victim was in a standing position when he was shot by someone positioned at his right.

Appellant invoked self-defense. He testified that he was issued a mission order on September 23, 1979 to investigate a report regarding the presence of unidentified armed men in Barrio San Jose, Roxas, Isabela. The following day, he was instructed by Sgt. Dominador Ignacio to get in touch with Nicanor Saludaes who may be able to give him information on the identities of the persons with unlicensed firearms in the place. When appellant met Nicanor Saludaes on September 29, 1979, he was informed that Jerry Calpito had an unlicensed firearm.

On October 5, 1979, Nicanor Saludaes went to the P.C. Headquarters in Roxas and told appellant that it would be best for him to see Jerry Calpito the following day as a relative of the latter would be buried. The next day, appellant went to Barangay San Jose, arriving there at 12 noon. Instead of going to the cemetery, he went to the house of Nicanor Saludaes. From there, they went to the house of Enteng Teppang to attend the "pamisa." While they were having lunch, Nick Saludaes advised appellant against confronting Calpito because it would create a disturbance at the "pamisa." He also told appellant that Calpito would surely pass his (Saludaes) house on his way home.

Appellant and Nicanor Saludaes positioned themselves inside the yard of the latter. When appellant saw Calpito, he went out of the yard into the barangay road. When Calpito was about three meters away from him, appellant asked him what was bulging in his waist. Instead of answering, Calpito took a step backward, drew his firearm

from the waist and fired twice at appellant. He missed because appellant dropped to the ground simultaneously firing his armalite.

After fifteen minutes, the police arrived and took the body of the victim to the morgue. Appellant was brought to the P.C. Headquarters in Roxas, where he was investigated.

III

The appeal hinges primarily on the credibility of the prosecution witnesses. Appellant claims that the prosecution witnesses, all of them being relatives of the victim, were naturally biased against him.

This Court has time and again reiterated the principle that it will not interfere with the findings of the trial court on the issue of credibility of witnesses and their testimonies unless the trial court has plainly overlooked undisputed facts of substance and value which would have altered the result of the case (*People v. Matrimonio*, 215 SCRA 613 [1992]). Findings of the trial court are generally accorded great respect by an appellate tribunal for the latter can only read in cold print the testimonies of the witnesses.

In the trial before the lower court, the eye-witnesses testified in their local dialect and their testimonies had to be translated to English. In the process of converting into written form the testimonies of the witnesses, not only the fine nuances but a world of meaning apparent only to the trial judge, may escape the reader of the translated words (*People v. Baslot*, 209 SCRA 537 [1992]).

The fact that the prosecution witnesses are relatives of the victim does not necessarily indicate that they were biased as to impair their credibility. In the absence of proof of ill motive on the part of witnesses, relationship between them and the victim does not undermine their credibility. On the contrary, it would be unnatural for persons such as the relatives of the victim who themselves seek justice to commit the injustice by imputing the crime on persons other than those who are actually responsible (*People v. De Paz*, 212 SCRA 56 [1992]).

Appellant's claim of self-defense is belied by the finding of the trial court that the victim was shot by someone who was standing on his right side. Appellant's version that he was in front of the victim when the latter fired a shot at him and that he retaliated while dropping on the ground, crumbles in the face of the physical evidence that the victim sustained two gunshot wounds which entered the right side of his body and a gunshot wound on the right side of his head. The nature and number of wounds inflicted by the appellant disprove the plea of self-defense (*People v. Bigcas*, 211 SCRA 631 [1992]).

Had appellant and Nicanor Saldares, Sr. not intended to harm the victim, they could have simply apprehended him. Or, having verified that Calpito possessed an unlicensed firearm, appellant could have reported the matter to his superiors so that warrants for Calpito's arrest and the seizure of his unlicensed firearm could have been obtained.

Appellant contended that the crime committed is homicide. The trial court correctly ruled that the crime of murder under Article 248 of the Revised Penal Code was indeed committed. Treachery attended the commission of the crime. The two conditions to constitute treachery were present in the case at bench, to wit: (a) the employment of means of execution that gives the person who is attacked no opportunity to defend himself or to retaliate; and (b) the means of execution were deliberately or consciously adopted (*People v. Narit*, 197 SCRA 334 [1991]).

Appellant deliberately executed the act in such a way that his quarry was unaware and helpless. This can be gleaned from his act of waiting for the victim behind the hollow-block fence of Nicanor Saldares and shooting the victim from his right side.

Evident premeditation was indubitably proven by the evidence showing that the execution of the criminal case

was preceded by cool thought and reflection. Appellant's resolution to carry out the criminal intent during the space of time sufficient to arrive at a clear judgment was shown (*People v. Castor*, 216 SCRA 410 [1992]).

In view of the presence of treachery which qualified the killing as murder, the evident premeditation should be considered only as a generic aggravating circumstance (*People v. Fabros*, 214 SCRA 694 [1992]).

The information alleged three other generic aggravating circumstances: ignominy, abuse of superior strength and taking advantage of public position. The trial court correctly ruled out ignominy on the strength of the autopsy conducted by the doctor who failed to find any other injuries such as bruises and contusions which may indicate that the victim was kicked by his assailants. It also correctly held that treachery absorbed abuse of superior strength (*People v. Moral*, 132 SCRA 474 [1984]).

The trial court properly appreciated taking advantage of public position as an aggravating circumstance. Appellant, a member of the Philippine Constabulary, committed the crime with an armalite which was issued to him when he received the mission order (*People v. Madrid*, 88 Phil. 1 [1951]).

Voluntary surrender may be considered in appellant's favor but this is offset by the aggravating circumstance of taking advantage of public position. Therefore, only the generic aggravating circumstance of evident premeditation may be appreciated against appellant. As such, the correct penalty would have been death in accordance with Articles 248 and 64(3) of the Revised Penal Code were it not for the fact that such penalty is constitutionally abhorrent. Hence, the proper penalty is reclusion perpetua.

The trial court correctly exercised its discretion in imposing moral, compensatory and exemplary damages (*People v. Rabanes*, 208 SCRA 768 [1992]; *People v. Quilaton*, 205 SCRA 279 [1992]).

WHEREFORE, the decision appealed from is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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