

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO LAZO ALIAS "DANNY"; AND BERTING ARELLANO Y SABALO, ACCUSED-APPELLANTS.

G.R. No. 75367. June 19, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

These are two appeals separately interposed by Danilo Lazo alias "Danny" and Berting Arellano from the decision of the Regional Trial Court, Branch XII, Sanchez Mira, Cagayan, in Criminal Case No. 1212-S (81) dated January 21, 1986, finding them both guilty of murder with frustrated murder and sentencing them to reclusion perpetua and to indemnify jointly and severally the widow of the deceased in the amount of P12,000.00 and to pay the costs.[1]

Between 6:30 and 8:00 o'clock in the evening of October 13, 1979, Felipe Garcia, his wife Felicidad, Bernardo Ventura, Cresencio Garcia, Emma Ventura, Margarita Ventura, Annong Garcia, Abba and Tony Arellano, a farmhand, were taking their supper inside the kitchen at the ground floor of Felipe's house located in Sitio Macugay, Barangay Abulug, Cagayan. The kitchen was lighted by three (3) improvised lamps locally called "sinulbong" with wicks fueled by kerosene. The lamps were placed on top of the dining table, one on each end of the table and the third at the center. Antonio "Tony" Arellano was seated on a bench immediately facing Felipe Garcia whose back was to the door.[2]

Suddenly, the kitchen door opened. Since Tony Arellano was facing the door to his north, he immediately saw the face of the intruder. It was Berting Arellano whom he had already known for about nine (9) years. About one (1) meter behind Berting was Danilo Laso who was holding a carbine rifle. Tony, aided by the glow of the lights emanating from the improvised lamps, was able to identify the two persons.[3]

Then, without any preliminaries, Danilo fired his rifle in two successive bursts at the occupants. The first shot hit the kitchen wall while the second shot fatally hit Felipe Garcia after which it grazed the left leg of Tony Arellano. Felipe shouted, "I am shot" and then fell on the floor. Stunned, Tony could only stare at the two assailants. The others, who were either too old or too young, were petrified with fear.

It was Tony who carried the mortally wounded victim to the second floor of the house. Subsequently, Felipe was rushed to a hospital in nearby Ballesteros where he died seven or eight hours after an emergency operation.[4]

The attending physician, Dr. Anselmo Talla, issued a medical certificate. His findings were:

"Fatal Gunshot Wound through and through with an entrance wound 1 cm. in diameter left lumbar and exit wound 2 cm. in diameter left subcostal region.

"Operative findings:

“(1) Massive left kidney injury;

“(2) One penetrating wound at the transverse colon;

“(3) Ten penetrating wounds at the left intestine;

“(4) Massive hematoma at the mesentery of the descending colon.”[5]

On the same day, Dr. Talla also treated Tony Arellano for a "bullet wound at the left leg, anterior aspect" which would "incapacitate or require medical attendance of nine (9) days." [6]

It was only on the following morning, October 14, 1979 that Tony Arellano revealed the identities of the assailants to the victim's widow, Felicidad Garcia, at the hospital. They were Danilo Lazo and Berting Arellano. On that same day, Tony reported the fatal shooting to the members of the Integrated National Police of Abulug, Cagayan, who immediately proceeded to the scene of the crime. Recovered in the kitchen of Felipe Garcia's house were two (2) empty .30-caliber shells and two (2) slugs. Also found just 10 meters from the bamboo fence of Garcia's house was a handkerchief with the name "Danny" or "Dony" embroidered on it.[7]

On the basis of the preliminary examination by the municipal judge on October 26 and 27, 1979, the two accused were ordered arrested and detained without bail. In two separate complaints, Danilo Lazo and Berting Arellano were charged with murder with frustrated murder (Criminal Case No. 1766) and Danilo Lazo alone with illegal possession of firearm and ammunitions (Criminal Case No. 1768).

Arraignment of the accused in the aforementioned cases was set on November 15, 1979 before the office of the municipal judge. Danilo and Berting entered a plea of not guilty and waived their right to the second stage of preliminary investigation. The two cases were then forwarded to the then Court of First Instance for the filing of the appropriate information. Criminal Case No. 1768 (for illegal possession of firearm) was subsequently dismissed on October 22, 1980 for insufficiency of evidence.[8]

Meanwhile, the information accusing Danilo and Berting of murder with frustrated murder for the death of Felipe Garcia and wounding of Tony Arellano was filed on February 24, 1981. It reads:

"That on or about October 13, 1979, in the municipality of Abulug, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Danilo Lazo alias Danny and Berting Arellano y Sabalo, armed with a gun, conspiring together and helping each other, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Felipe Garcia and Tony Arellano, inflicting wounds on the body of said Felipe Garcia which caused his death, and wound on the left leg of Tony Arellano.

"That the accused had performed all the acts of execution (with respect to the victim Tony Arellano) which would have produced the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of their will." [9]

Alleging that they have been under detention for more than one year because no bail was recommended for their provisional release, Danilo and Berting applied for and was granted bail at P40,000.00 each on February 27, 1981.[10]

At their arraignment on August 11, 1981 before the trial court, Danilo and Berting pleaded not guilty. After due hearing, the lower court rendered a judgment of conviction, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING, the Court finds the accused Berting Arellano and Danilo Lazo guilty beyond reasonable doubt of the crime of Murder with Frustrated Murder and considering the absence of any mitigating circumstances and with the presence of the aggravating circumstance of dwelling, nighttime and treachery, the Court hereby imposes the penalty of imprisonment of Reclusion Perpetua and to indemnify jointly and severally the widow of the deceased Felipe Garcia the amount of P12,000.00 and to pay the costs of

the proceedings." [11]

In adjudging Danilo and Berting guilty as charged, the lower court relied principally on the eyewitness account of Tony Arellano, 29 years old and a farm helper of the Garcias for about seven years. Tony was directly facing the kitchen door when it was flung open by the malefactors. The same bullet that felled Felipe grazed his left leg. Of the several occupants of the kitchen that Saturday night, it was only Tony who came forward to name Danilo and Berting as Felipe's killers.

The widow, Felicidad, a retired public school teacher, admitted that she did not see who actually shot her husband. But she spoke on the possible motive behind the killing. While Felipe was still a councilor in the locality, he accidentally shot Domingo Lazo, the father of Danilo. Also, about a month before Felipe's death, Prisco Garcia and Juan Garcia (Felipe's brother and nephew respectively) were accused in court of stealing the carabao of Domingo. Felipe's active intervention in the conflict thwarted efforts at settlement between the parties. Two days after the dismissal of the case against Prisco Garcia, Felipe was fatally shot. [12]

As earlier noted, the two accused filed separate appeals. Danilo assailed the trial court for giving credence to the unreliable testimony of alleged eyewitness Tony Arellano, for not appreciating his defense of alibi and in not acquitting him on reasonable doubt. For his part, Berting contended that he was denied due process of law when the information for murder with frustrated murder was filed against him in the absence of a valid preliminary investigation and representation by counsel. He likewise maintained that he was elsewhere when the crime was committed.

Pending review, accused-appellant Danilo Lazo was released on temporary liberty by reason of ill health. Berting is presently confined at the New Bilibid Prison in Muntinlupa. [13]

In denying his participation in the killing of Felipe Garcia, Danilo Lazo, 30 years old, farmer and a resident of Macugay, Guiddam, Abulog, Cagayan, told the trial court that from October 11 to 14, 1979, he was staying at the clinic of Municipal Health Officer Dr. Gregorio Farin in Ballesteros, Cagayan, which is about fourteen (14) kilometers from Macugay. His wife, Maribel, was confined in that clinic because of profused bleeding due to threatened abortion. Danilo and his wife had earlier left Macugay at about 5:00 o'clock in the afternoon of October 11, 1979. Because of Maribel's delicate condition, Dr. Farin ordered her immediate confinement. Thus from the afternoon of October 11, 1979 until 2:00 p.m. of October 14, 1979 when Maribel was discharged, Danilo was constantly by her side except briefly in the morning of October 14th when Danilo went to Macugay to get additional money. According to Danilo, their meals and other provisions were brought to them by his mother-in-law who lived about a kilometer away from the clinic. And except for the occasional visits of his mother-in-law, he and his wife were left to themselves. [14]

Danilo sought to destroy the credibility of Tony as the prosecution's sole eyewitness by pointing to allegedly patent inconsistencies in his testimony. According to Danilo, Tony contradicted himself when he tried to describe the kind of weapon used in shooting Felipe. Tony also wavered when asked about the distance between the assailants and their victims. It is also incredible and contrary to human nature that after the first gun report, Tony did not seek cover and instead just stared at the gunmen. Likewise, it is utterly unbelievable that despite having been shot on the leg, Tony, by himself, could bodily lift Felipe and bring him to the second floor of the house.

Danilo, moreover, cautioned against blind acceptance of Tony's testimony. In 1978, Tony had an altercation with Berting over a stoning incident and it was quite possible that Tony could still harbor a grudge against Berting. Moreover, it should be expected that Tony would be a biased witness because he was a farmhelper of the deceased for many years.

We hold that the trial court did not err in believing Tony's narration. Despite its seeming inconsistencies, it is a fairly accurate account of the crime in question and dovetails with the postmortem report and the findings of the investigating officers who repaired to the scene for an on-the-spot assessment.

It is a well-established rule that the testimony of a single witness, if positive and credible, is sufficient to support a conviction.[15] We see no reason to deviate from the trial court's observation that Tony's testimony bore "the earmarks of truth and sincerity" x x x "having been delivered spontaneously, naturally and in a straightforward manner." [16]

The Court seriously doubts the defensive claim of Danilo that on the night Felipe was gunned down, Danilo was at the bedside of his ailing wife, at the clinic of Dr. Farin, fourteen kilometers away. First, the distance between Ballesteros and Macugay, the scene of the crime, can be negotiated in an hour. So there is no impossibility of access.

Second, while Dr. Farin might have confirmed Danilo's presence in his residence-cum-clinic, there were no pieces of evidence like medical records or hospital receipts to substantiate Danilo's four-day stay in the clinic except for the medical certificate which Dr. Farin issued on November 4, 1979 or three weeks later, upon the request of Danilo's wife. In his testimony, Dr. Farin declared that he did not keep any medical records of his patients treated outside of his regular office, the rural health unit.[17] For a doctor, this is highly irregular. Records are indispensable in monitoring the medical history of patients, including drugs administered in the course of their treatment.

Third, Danilo's answers during cross-examination were evasive and uncertain. He practically groped for words when asked to elaborate on the physical layout of the clinic, the alleged lack of medical equipment and toilet facilities, and whether or not a nurse or midwife attended to his wife. It also strikes the Court as strange that Danilo chose to bring his bleeding wife to Dr. Farin's clinic, fourteen kilometers away, when there were nearby clinics in Macugay. It was also a fact that Danilo's wife had a physician-uncle who resided near the house of his mother-in-law.[18]

The other accused, Berting Arellano, 30 years old, farmer, also claimed that he had an alibi. He testified that on that fateful night of October 13, 1979, he was in Sta. Teresita, Cagayan, working as a farmhand of Mrs. Leonarda Madayag, his cousin-in-law. He had been Madayag's farmworker since 1978. On October 17, 1979, he went to Macugay, Abulug, Cagayan to look for other farmworkers to help in the transplanting of rice seedlings. While in Macugay, he learned that his uncle Eping (Felipe Garcia), a second degree cousin of his mother, had been shot and was then lying in state at his residence. Unable to find the needed planters, Berting instead remained in Macugay to attend his uncle's wake until the interment. After the burial, Berting, together with Danilo, was apprehended as suspect in the killing of Felipe Garcia.[19]

Berting's alibi is an obvious fabrication. Any farmer worth his salt must first assure himself that there are available farmhands before he starts procuring rice seedlings. The time element is crucial. These seedlings must be transplanted within a definite time frame or else they will wilt and become useless. In the case of Berting, it was like placing the cart before the horse: he would like us to believe that they bought the seedlings first, after which he was told by his cousins to proceed to Macugay to hire workers for planting.

To corroborate his exculpatory tale, Berting presented Leonarda Madayag, his first cousin-in-law, as defense witness. Leonarda testified that Berting was in Sta. Teresita on October 13, 1979 helping out in the ricefield. She recalled that it was on October 17, 1979 when she and her husband sent Berting to Macugay to look for farmhelpers. But on cross-examination, Leonarda could not fully account for the whereabouts of the accused during the night in question. She could not state with certainty that it was impossible for Berting to be in Macugay

at the precise time that Felipe was murdered. Moreover, she showed her bias in favor of Berting when she admitted that she and her husband were very close to him and even considered him as their son and allowed him to stay in their house. The mother of Berting and Leonarda's mother-in-law were sisters.[20]

Altogether, the alibi offered by Berting was not only inherently weak; it also lacked a strong corroboration. The court a quo did not err when it gave more evidentiary value to the positive identification made by Tony Arellano. The crime scene was amply lighted. Tony was familiar with the accused since they were all barriomates. The defense was unable to conclusively establish that Tony was ill-motivated when he denounced Danilo and Berting as his master's killers.

Perhaps in a final bid to gain a reversal, Berting assailed his conviction from a procedural standpoint. Berting contended that he was denied due process when the information for murder with frustrated murder was filed against him and Danilo despite the absence of a valid preliminary investigation and representation by counsel.[21]

The argument is devoid of merit. The records of the case reveal that Berting and Danilo were duly informed of their right to preliminary investigation and to counsel but it was they who chose to forego with the second stage of the proceedings. It must be stressed that the right of an accused to a preliminary investigation is a personal right and can be waived expressly or by implication. That the two accused explicitly waived their right is shown in the certification and order issued by the municipal judge on November 15, 1979 to the effect that:

"PRELIMINARY INVESTIGATION

"After arraignment the accused were informed and made to understand of their right to enter preliminary investigation under Rule 112 of the Rules of Court and avail themselves of the services of a counsel.

"The accused waived their right to enter preliminary investigation and reserved their right to present their evidence in the Court of First instance."

"Abulug, Cagayan, November 15, 1979.

"EUSTAQUIO M. LIZARDO

"Municipal Judge

"ATTESTED BY:

"DANILO LAZO (SGD.)

"(Accused)

"BERTING ARELLANO (SGD.)

"(Accused)"

"ORDER

"x x x When these cases were called for hearing today, the accused Danilo Lazo, alias Danny, and Berting Arellano y Sabado were duly arraigned and waived their right to enter the preliminary investigation of the second stage in Criminal Case No. 1766. x x x".[22]

But assuming arguendo that there was no preliminary investigation, the right of the accused thereto had been forfeited by their inaction and could no longer be invoked, for the first time, at the appellate level.[23] The matter should have been raised before arraignment at the trial court.[24]

Furthermore, at the then Court of First Instance, Berting and Danilo filed on February 24, 1981 a petition for bail

without raising the alleged lack of preliminary investigation. We have ruled that in so doing, the accused had waived whatever defect there was in the conduct of the preliminary investigation and are considered to have recognized the legality of their detention.

“x x x appellants appear to have waived such right, because immediately after their arrest, they filed bonds for their release and subsequently proceeded to trial, without previously claiming that they did not have the benefit of a preliminary investigation.”[25]

The crime committed is the complex crime of murder with frustrated murder since the death of Felipe Garcia and the wounding of Tony Arellano were caused by a single bullet.[26] The trial court correctly concluded that the aggravating circumstances of treachery, nocturnity and dwelling attended the commission of the crime. Under Article 48 of the Revised Penal Code, the penalty to be imposed upon the accused in a complex crime shall be for the most serious crime which is murder in the instant case, the same to be applied in its maximum period or death. However, in view of the constitutional provision prohibiting the imposition of capital punishment, the penalty of reclusion perpetua was properly imposed upon the two accused-appellants and in equal degrees since they acted in concert in killing Felipe Garcia and injuring Tony Arellano. Conspiracy was evident from the coordinated movements of the two felons. Both armed with deadly weapons, Berting was the first to barge into the kitchen, followed closely by Danilo who then opened fire at the occupants.

WHEREFORE, with the sole modification that the amount of indemnity to be paid jointly and severally by the two accused-appellants Danilo Lazo and Berting Arellano to the heirs of Felipe Garcia be increased to P50,000.00 in line with recent jurisprudence, the judgment under review is hereby AFFIRMED. With costs against the accused-appellants.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Records, p. 431.

[2] TSN, September 2, 1982, pp. 3 and 19; June 28, 1982, pp. 8-9.

[3] TSN, June 28, 1985, p. 5; August 3, 1982, pp. 12-14.

[4] TSN, September 2, 1982, pp. 4 and 22; June 22, 1983, pp. 34 - 45.

[5] Exh. A.

[6] Records, p. 4.

[7] TSN, September 2, 1982, p. 6; March 2, 1983, pp. 4-5, 10-13 and 21.

[8] Annex B, Rollo, p. 76.

[9] Criminal Case No. 1212-S (81), Records, p. 41.

[10] Records, p. 41.

[11] Records, p. 431.

[12] TSN, September 2, 1982, pp. 2, 13, 26-28.

[13] Records, p. 446; Rollo, p. 87.

[14] TSN, August 15, 1984, pp. 3-4, 26-27, 30.

[15] *People v. De la Cruz*, G.R. Nos. 71044-45, March 16, 1987, 148 SCRA 582.

[16] Records, pp. 9 and 10.

[17] TSN, April 10, 1984, pp. 4, 9-10, 17-18.

[18] TSN, August 15, 1984, pp. 23-24, 33-34.

[19] TSN, April 10, 1984, pp. 27-32, 39.

[20] TSN, November 5, 1984, pp. 3-5, 11.

[21] It should be noted that under the old Criminal Procedure then in force, preliminary investigation consisted of two stages: (a) preliminary examination and (b) preliminary investigation proper. Now, under Section 37 of BP Blg. 129 and Rule 112 of the 1985 Rules on Criminal Procedure, the two stages have been integrated. See *People v. Cierbo*, G.R. No. 62887, August 29, 1986, 143 SCRA 689.

[22] Records, pp. 31 and 33.

[23] *People v. Maghanoy*, G.R. Nos. 67170-72, December 15, 1989; *People v. Arbois*, No. L-36936, August 5, 1985, 138 SCRA 24.

[24] *Sanciangco v. People*, G.R. No. 72830, March 24, 1987, 149 SCRA 1.

[25] *People v. Selfaison*, No. L-14732, January 28, 1961, 1 SCRA 235, 244.

[26] *People v. Paculba*, Nos. L-37366-67, August 31, 1983, 124 SCRA 383; *People v. Madali*, G.R. Nos. 67803-04, July 30, 1990.

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