

GASPAR MEDIOS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 79570. January 31, 1989*

Ponente: CORTES, J.

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Petitioner, Capt. Gaspar Medios, was originally charged in two separate informations for Murder relative to the deaths of PC Capt. Guillermo Vilorio and Engineer Celestino Egipto. These informations were later consolidated in an Amended Information dated January 26, 1981, duly admitted by the Court of First Instance on February 27, 1981 and subsequently docketed as Criminal Case No. BR. XXIV-0120, charging petitioner with the crime of Direct Assault with Double Murder. The amended information reads as follows:

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That on or about the 12th day of May, 1979, in the municipality of Roxas, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery did then and there wilfully, unlawfully and feloniously assault, attack and shoot with an illegally possessed firearm, Capt. Guillermo Vilorio, then a member of the Philippine Constabulary with the rank of Captain and the Commanding Officer of the 118th PC Company stationed at Roxas, Isabela, and who was then actually engaged in the performance of his official duties as such Commanding Officer of the 118th PC Company, that is by trying to stop a prohibited game being played by herein accused Captain Gaspar Medios and his companions, inflicting upon the said Capt. Vilorio a gunshot wound left hip joint, gunshot wound hypochondriac region medial portion and by the same burst of gunfire from said armalite rifle used by accused Capt. Gaspar Medios, one Engr. Celestino Egipto, sustained a gunshot wound at the left lumbar region and right hypochondriac region of his body, which gunshot wounds directly caused the death of said Capt. Guillermo Vilorio and Engr. Celestino Egipto [RTC Records, p. 150.]

Notwithstanding the absence of his counsel de parte, petitioner insisted on entering his plea of "not guilty" to the crime charged with the assistance of a counsel de oficio on April 30, 1981.

After trial, the court rendered judgment on May 22, 1985 finding the petitioner guilty beyond reasonable doubt of two (2) distinct and separate crimes of Homicide, as provided for and penalized under Article 249 of the Revised Penal Code and, accordingly, sentenced him:

. . . to suffer the penalty of imprisonment of from TEN (10) YEARS of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) months of reclusion temporal, as maximum, for the death of Capt. Guillermo Vilorio, and the penalty of imprisonment of from SIX (6) YEARS and ONE (1) DAY of prision mayor, as minimum to FOURTEEN (14) YEARS and SIX (6) MONTHS of reclusion temporal, as maximum, for the death of Engr. Celestino Egipto, with the accessory penalties provided for by law; to pay to the heirs/family of the late Capt. Guillermo Vilorio, through Mrs. Celestino Ronquillo-Viloria, the amounts of P30,000.00 as death indemnity; P153,125.00 as compensatory damages; P15,000.00 for hospitalization, funeral and burial services and P50,000.00 as moral damages, and to pay to the heir/widow, Mrs. Merlita Egipto, of the late Engr. Celestino

Egipto the amounts of P30,000.00 as death indemnity, P210,000.00 as compensatory damages; P10,000.00 for hospitalization, funeral and burial services and P30,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

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[RTC Records, p. 790.]

Thereafter, petitioner sought recourse with the Court of Appeals in CA-G.R. No. 02839. However, the respondent court found his appeal to be devoid of merit and affirmed the trial court's judgment in its decision promulgated on April 28, 1987.

Petitioner now comes before this Court by way of a petition for review on certiorari, assigning the following errors:

I

THE HONORABLE APPELLATE COURT DID NOT OBSERVE AND INSTEAD ACTED CONTRARY TO THE STANDARD SET DOWN IN RULE 131, SEC. 2 AND RULE 133, SEC. 2, OF THE RULES OF COURT AS WELL AS IN RULINGS AND DECISIONS PROMULGATED BY THIS HONORABLE TRIBUNAL ON THE CREDIBILITY OF EVIDENCE MORE PARTICULARLY THE EVIDENCE ADDUCED FROM THE TESTIMONY OF PROSECUTION WITNESS PATRIO AMOROSO.

II

THE HONORABLE APPELLATE COURT ERRED IN AFFIRMING THE SENTENCE OF CONVICTION RENDERED BY THE TRIAL COURT. [Petitioner's Brief, p. 3; Rollo, p. 62.]

As culled from the decision of the trial court, the undisputed facts of the case are as follows:

On the evening of May 12, 1979, PC Capt. Guillermo Vitoria, then the Officer-in-Charge and Commanding Officer of the 118th PC Company stationed at Roxas, Isabela, was out patrolling his area of responsibility in a military service jeep driven by PC Sgt. Patrio Amoroso. While passing through Barangay Munoz, east of Roxas, Capt. Vitoria noticed the brightly lit compound of Abelardo Navalta, father-in-law of the petitioner who was then head of the Regional Civilian Home Defense Forces of the Philippine Constabulary in Tuguegarao, Cagayan. Capt. Vitoria directed Sgt. Amoroso to park the jeep outside the Navalta compound, then alighted from the jeep and entered the compound carrying his firearm, an M-16 rifle. It turned out that there was a birthday celebration going on within the compound for the eldest daughter of the petitioner and some guests were engaged in the games of mahjong and pepito, a local card game, on two (2) playing tables situated under the azotea in front of the main door of the house. Capt. Vitoria, who was in his fatigue uniform, approached the players and ordered them to stop the games, apparently upon the belief that they were illegally gambling. Mrs. Felicidad Navalta-Medios, wife of the petitioner, pleaded with Capt. Vitoria to allow the games to continue, explaining that they were merely celebrating the birthday of her daughter. Nevertheless, the players stood up and started to leave the playing area. A few minutes thereafter, gunshots were fired resulting in the fatal shooting of Capt. Vitoria and Engr. Celestino Egipto, one of the guests [See RTC Decision, pp. 3-7; RTC Records, pp. 767-771.]

The prosecution's version of the shooting that fateful night, which was given credence by the trial and appellate courts, was as follows:

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. . . As they [the players] were leaving, there was a sudden burst of automatic gunfire which came from the doorway of Navalta's house. That gunfire felled Capt. Vitoria. In that same burst, Engr. Celestino Egipto was also hit as he was about to board his motorcycle parked in the compound. The accused then went to where Vitoria fell,

took the latter's M-16 armalite rifle which he was then holding, and with said rifle he shot Vilorio twice. Vilorio muttered "aray". After shooting Vilorio, Medios called his father-in-law, Abelardo Navalta. With the latter's aid, Medios took hold of the hand of Capt. Vilorio, inserted Vilorio's forefinger to the trigger guard and made him fire the armalite rifle in the air. One of the bullets hit the overhanging pine tree. After doing that, Medios left and entered their house.

Sgt. Amoroso, when hearing the first burst of gunfire, ran inside the Navalta compound and saw what transpired. When the accused left the scene and entered their house, Amoroso pleaded to Abelardo Navalta to help him bring Capt. Vilorio to the hospital. Reluctantly, Navalta assisted him in carrying Vilorio to their service jeep, after which Amoroso brought his superior to the Roxas Emergency Hospital at Roxas, Isabela . . . Vilorio was later transferred to the Isabela Provincial Hospital, Ilagan, Isabela, upon the advice of the hospital authorities of Roxas Emergency Hospital. Three days thereafter, Vilorio was airlifted to the V. Luna Hospital/AFP Medical Center in Quezon City where he died two days later.

In the meantime, Engr. Celestino Egipto was rushed to the Isabela Provincial Hospital. But he died several hours later after undergoing operation [RTC Decision, pp. 3-4; RTC Records, pp. 767-768.]

On the other hand, during the trial the defense sought to establish that Capt. Medios did not shoot the victims, and that, in fact, the gunshots which felled the latter originated from unknown assailants situated outside the Navalta compound [See RTC Decision, pp. 5-6; RTC Records, pp. 769-770.]

I.

Petitioner raises as error the reliance by the trial and appellate courts on the testimony of the prosecution's sole eyewitness, Sgt. Patrio Amoroso, who positively identified petitioner as the gun-wielder.

Petitioner contends that Sgt. Amoroso could not have witnessed the shooting of Capt. Vilorio and Engr. Egipto inside the Navalta compound because the physical factors availing during the night of May 12, 1979 were such that Sgt. Amoroso's view of the inside of the compound was not unobstructed. Petitioner points out that at the time of the shooting, Sgt. Amoroso was in a jeep parked outside the compound, which was fenced partly with hollow blocks one and a half (1 1/2) meters high, and the barangay road along which the jeep was parked was one and a half (1 1/2) feet lower in elevation than the concrete flooring of the compound. Moreover, there were vehicles parked inside the compound and a wooden swing just outside the compound fence near the main gate which would have obstructed Sgt. Amoroso's view of the scene of the shooting [Petitioner's Brief, pp. 1-9; Rollo, pp. 60-68.]

Petitioner further contends that Sgt. Amoroso's testimony is tainted by numerous unexplained inconsistencies and contradictions in connection with his narration of the shooting of Capt. Vilorio and exposes him as an "absolutely unreliable and untrustworthy person" [Petitioner's Brief, p. 13; Rollo, p. 72.]

However, it is a settled rule that where the issue pertains to the credibility of a witness, this Court will not interfere with the findings of the trial court on the matter, considering that it had the peculiar opportunity to observe the gestures, features, demeanor and manner of testifying of the said witness, unless the court has plainly overlooked undisputed facts of substance and value that, if properly considered, would affect the result of the case [People v. Sinaon, G.R. No. L-15631, May 27, 1966, 17 SCRA 260; People v. Espejo, G.R. No. L-27708, December 19, 1970, 36 SCRA 400; People v. Bautista, G.R. No. L-48606, July 11, 1986, 142 SCRA 649; People v. Paragoso, G.R. No. 50872, October 18, 1988.]

In the case at bar, the Court does not find any circumstance that would justify a departure from the foregoing general principle.

Based on a careful scrutiny of the evidence consisting of photographs and sketches presented by both sides, testimonies of witnesses and findings made in an official ocular inspection conducted in the Navalta compound in the afternoon of August 9, 1982, the trial court made a categorical finding that Sgt. Amoroso's view of the scene of the crime was not obstructed [See RTC Decision, pp. 8-9; RTC Records, pp. 772-773], and, as confirmed by respondent appellate court, it was not impossible for Sgt. Amoroso to have witnessed the incidents which he testified to have happened inside the Navalta compound during that fateful night. The Court respects this factual finding.

With regard to petitioner's claim that Sgt. Amoroso's testimony is tainted with fatal inconsistencies, the Court finds that these "inconsistencies" are minor in character and do not affect the witness' credibility. [See RTC Decision, pp. 9-10; RTC Records, pp. 773-774; Also, CA Decision, pp. 11-13; Rollo, pp. 38-40.]

In fact, they strengthened rather than weakened Sgt. Amoroso's credibility.

As stated by the trial court:

. . . the prosecution has PC Sgt. Patrio Amoroso as its eyewitness who unwaveringly declared that it was the accused who shot Vilorio and Egipio. . . . In narrating what he saw, Amoroso was candid enough to admit that he did not see who fired the first burst of gunfire. If he were a coached witness, as the defense charged him to be, he could easily have asserted that he did see the person who fired the first burst of gunfire. But he did not because at that time, he was sitting behind the steering wheel of their jeep.

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. . . His [Sgt. Amoroso's] testimony, as a whole, given in a straightforward manner, mentioning the details of the incident that could not have been merely concocted, indicating sincerity in the narration of events during the incident, is indicative of the truth of what actually happened (People vs. Villa, et al, G.R. No. L-31401, October 30, 1979, 93 SCRA 716). And if ever he committed mistakes, the same is attributed, in a way, to the fact that his testimony (from the court of origin, Court of First Instance of Isabela, Fourth Branch, Roxas, Isabela, to the termination of his testimony on November 16, 1982) was given in a span of almost 2 1/2 years. One cannot be expected to recall all the details of an incident which happened a couple of years back; otherwise, there is a suspicion that he is rehearsed and a trained witness [RTC Decision, pp. 8, 10; RTC Records, pp. 772, 774.]

In a last ditch effort to discredit Sgt. Amoroso's testimony, petitioner quoted portions of the testimonies of Dr. Alma Rapadas-Valdez, the Supervising Resident Physician at the Isabela Provincial Hospital, and Dr. Desiderio Noraleda, Medico Legal Officer of the PC Crime Laboratory at Camp Crame in Quezon City.

Petitioner argued that Sgt. Amoroso's claim that Capt. Vilorio was fired upon for the second time as he lay prostrate on the ground was "exposed as untruthful by Dr. Valdez when . . . she categorically asserted that Vilorio was standing not laying [sic] on the floor, when he (Vilorio) was shot" [Petitioner's Brief, p. 19; Rollo, p. 78.]

As regards Dr. Noraleda's testimony, petitioner alleged that it contradicted the story of Sgt. Amoroso that petitioner shot Capt. Vilorio with the latter's armalite because the witness stated that one of the wounds was compatible with a gunshot wound inflicted by a .45 caliber slug thereby supporting defense's theory that Capt. Vilorio was fired upon by an unknown assailant employing two kinds of firearms while positioned on the part of the national road west of the Navalta compound [Petitioner's Brief, pp. 19-20; Rollo, pp. 78-79.]

However, a study of the above testimonies reveals to this Court the baseless and misleading conclusions the petitioner has drawn therefrom.

In the first place, Dr. Valdez being only the surgeon who operated on the victims, was not competent to testify as

to the position of Capt. Vilorio when he was fatally shot. Moreover, she did NOT categorically state that Capt. Vilorio was in a standing position when shot. Neither did Dr. Noraleda categorically state that the weapon used in shooting Capt. Vilorio was a .45 caliber pistol.

The Court finds that the above testimonies neither contradict nor refute the direct testimony of Sgt. Amoroso.

II.

Petitioner further raises as error his conviction on the ground that the prosecution had failed to present other competent and substantial evidence to prove his guilt beyond reasonable doubt.

This assignment of error is unmeritorious.

Contrary to the claim that Sgt. Amoroso's testimony is uncorroborated, the prosecution had presented the testimonies of the widows of the victims, Mrs. Merlita Egipto and Mrs. Cristina Vilorio, and Lt. Col. Vicente Imperial.

Mrs. Merlita Egipto testified that at about 2:00 o'clock in the morning of May 13, 1979, she saw her husband, Engr. Celestino Egipto, in serious condition in the operating room at the Isabela Provincial Hospital due to a gunshot wound. She further testified that at 11:00 o'clock in the evening of that same day, as her husband was regaining consciousness, he told her that Capt. Gaspar Medios had shot him [See TSN, February 7, 1983, pp. 13-19.]

On the other hand, as summarized by the trial court, Mrs. Cristina Vilorio, widow of Capt. Vilorio, testified that:

. . . in that night of May 12, 1979, she was awakened by her husband's driver, Sgt. Patrio Amoroso, with the request that she go with him to the hospital because her husband was there, . . . that when her husband regained consciousness in the Isabela Provincial Hospital, she asked him who shot him and he told her that it was Capt. Gaspar Medios who shot him . . . ; that after his operation in the Isabela Provincial Hospital, she again talked to her husband and it was in [sic] that occasion when she [sic] told her that he was then stopping the gambling in the house of Mr. Navalta and when he was about to leave, he was shot by Capt. Medios . . . [RTC Decision, p. 11; RTC Records, p. 775.]

On his part, Lt. Col. Imperial, who was then Acting Provincial Commander of the province of Isabela, testified that, at about midnight of May 12, 1979, he was awakened by one of his soldiers and informed that Capt. Vilorio was shot and in critical condition at the Isabela Provincial Hospital. He immediately proceeded to the hospital and found Capt. Vilorio lying on a stretcher in the emergency room. He then asked Capt. Vilorio who had shot him, and to this query the victim answered that a fellow constabulary officer by the name of Capt. Gaspar Medios had shot him. Thereupon, sensing that death may be imminent, Lt. Col. Imperial initiated the taking of Capt. Vilorio's statement regarding the identity of his assailant, with the assistance of a certain Sgt. Lamorena who took down the statement of Capt. Vilorio [See TSN, July 11, 1983, pp. 6-18.] This statement, which was signed by Capt. Vilorio and subscribed and sworn to before Lt. Col. Vicente Imperial, was presented by the prosecution as Exhibit "O".

The trial court admitted this exhibit together with the statements allegedly made by the victims to their respective widows and Lt. Col. Imperial, as testified to by the latter, as part of the *res gestae*.

Petitioner, in citing the 1922 case of *People v. Dizon* [44 Phil. 267], contends that the trial court erred in admitting Exhibit "O" as part of the *res gestae* inasmuch as the prosecution had failed to present evidence that the declarant, Capt. Vilorio, read the alleged statement or that the contents thereof was read to him upon his signing.

As far as the document is concerned the assignment of error is well taken. Indeed, a perusal of the testimony of Lt. Col. Imperial will reveal the failure of the prosecution to establish that Capt. Vilorio had read the statement, or the

contents thereof was read to him. However, the error is immaterial because Lt. Col. Imperial, one of the persons before whom the declaration was made, in fact testified as a witness and related the statements made to him by Capt. Viloria concerning the identity of the assailant. Such statements need not be in writing to be admissible as part of the *res gestae* [See *People v. Dizon*, *supra*.]

The Court, in laying down the standard for the application of the rule on *res gestae*[*], has stated that "all that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances" [*People v. Ner*, G.R. No. L-25504, July 31, 1969, 28 SCRA 1151, 1161-1162; *People v. Abboc*, G.R. No. L-28327, September 14, 1973, 53 SCRA 54, 61; *People v. Berame*, G.R. No. L-27606, July 30, 1976, 72 SCRA 184, 190.]

As noted by the trial court, the testimonies of the above three witnesses involved statements made by the two victims identifying their assailant a few hours after they were shot. Moreover, the trial court found that these statements were given before the victims had time to contrive or devise anything contrary to the actual facts that occurred [RTC Decision, p. 12; RTC Records, p. 776.] This finding, amply supported by the evidence on record, will not be disturbed by this Court.

Thus, although the statements were not shown to have been made by the victims under the consciousness of impending death and therefore cannot be admissible as dying declarations, these statements were correctly admitted as part of the *res gestae* [*People v. Alban*, G.R. No. L-15203, March 29, 1961, 1 SCRA 931; *People v. Laquinon*, G.R. No. L-45470, February 28, 1985, 135 SCRA 91.]

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals rendered in CA-G.R. No. 02839 on April 28, 1987 is AFFIRMED.

SO ORDERED.

Fernan, (C.J.), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[*] Section 36, Rule 130 of the Revised Rules of Court provides:

... Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. . . .

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