

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR JEREZA, ACCUSED-APPELLANT.

G.R. No. 86230. September 18, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Court affirms the judgment herein appealed from.

The accused-appellant was charged with murder under an information filed on November 24, 1986, stating thus:

The undersigned Second Assistant Provincial Fiscal of Aklan hereby accuses EDGAR JEREZA of the crime of MURDER, committed as follows:

That on or about the 8th day of July, 1986, in the afternoon, at the Poblacion, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, without just motive, while armed with Caliber .22 Revolver, marked "Rohm" with Serial No. 44600, and with intent to kill one NOEL RIMON, did then and there wilfully, unlawfully and feloniously attack, assault, shoot and wound the said NOEL RIMON, thereby inflicting upon the latter mortal wounds, to wit:

1 Lacerated Wound, 1.5 x 1.5 cm.; Forehead, right;

1 Gunshot wound, 1 x 1 cm. with Contusion, collar, maxillary area, left;

3 Abrasion, 1 x 4 cms., zygomatic area, right.

as per Medico-Legal Report on Physical Injuries signed Dr. Esteban B. Villaruel, Resident Physician, Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and forming integral part hereof, as Annex "A" which wounds directly caused the death of the said NOEL RIMON, as per Autopsy Report of Dr. Roberto V. Garcia, Medico-Legal Officer, National Bureau of Investigation, Medico-Legal Division, Manila, likewise attached hereto and made integral part hereof as Annex "B".

That as a result of the criminal acts of the herein accused, the heirs of the deceased NOEL RIMON suffered the following damages:

1. P30,000.00 as actual and compensatory damages;
2. P30,000.00 as moral damages; and
3. P20,000.00 as exemplary damages.[1]

The accused pleaded "not guilty", and although he admitted having taken the life of the victim, Noel ("Boy") Rimon, he allegedly did so in defense of his own person.

In his order of July 14, 1987, the trial judge[2] set the case for reception of evidence for the defense, to establish self-defense.

The defense first presented Arthur Castor, a driver, and a resident of Libacao, Aklan. He alleged that on July 8, 1986, he was aboard a bus, a passenger truck operated by the Seraspi company returning from Iloilo City to Kalibo, Aklan, driven by the victim, when, at or about five o'clock in the afternoon, and after the vehicle had parked near the Castillo monument in Kalibo, Aklan, he was distracted by an argument going on between the victim and the accused, about a certain "clutchbag which Edgar would like to bring to the municipal hall." [3] The accused allegedly then alighted. The victim, however, tailed him. He allegedly then saw the victim hacking the accused with a bolo he had kept under his seat, which the latter parried, but which decked him. Thereafter, the accused reached inside the clutchbag in question, from which a twenty-two caliber automatic pistol emerged, which the accused aimed at the victim and which he fired. The first shot allegedly hit the victim in the face. He fired two more shots both of which also found their mark.

He also declared that he was at the rear portion of the bus at that time as the two protagonists struggled outside. He claimed that he was the only passenger by then.

The defense likewise presented Teresita Loresco, a medical records librarian at the Dr. Rafael Tumbokon Memorial Hospital in Kalibo, and a resident of Andagao, Kalibo, Aklan. She averred that on July 8, 1986, the accused was admitted to the hospital for treatment of hacking wounds. The accused allegedly suffered four "multiple incised wounds." [4] The attending physician's, Dr. Esteban Villaruel's, medico-legal report stated that he sustained cuts on the left arm, and right hand. [5] It also appeared that he was discharged on the same day.

In his testimony, the accused claimed that he was in the bus in question as inspector for Seraspi bus company, while the victim drove it. He contended that as the bus unloaded passengers and cargo near the Castillo monument, in Kalibo, he and the victim tangled in an argument concerning a clutchbag which he allegedly found in one of the bus seats, and which contained a firearm. He allegedly sought to surrender it to the Kalibo police, but the victim allegedly insisted that they keep it. He allegedly alighted, anyway, on his way to the police station, the clutchbag tied around his arm, when allegedly, "somebody shouted and when I looked back, I saw that it was Boy Rimon and he was already hacking me and I was hit here on my left arm." [6] He allegedly retreated, but the victim allegedly boloed away, hitting him on the left breast and later, the left arm. He allegedly rolled over to a canal, opened the clutchbag, and reached for the gun, with which he shot the victim. He shot him three times until he, the victim, fell and died. He also said that when he fired at him, he was lying on the ground while the victim stood about a meter away.

He later surrendered to the municipal authorities and turned over the firearm to the police. He was also brought to the Dr. Tumbokon Memorial Hospital when Dr. Villaruel treated him for bolo wounds.

On cross-examination, he testified that he and the victim were alone in the bus when they began exchanging words. He also admitted knowing how to operate a motorcycle, being a motocross racer, and that he had joined racing competitions.

The defense then rested, and the prosecution presented rebuttal evidence.

The prosecution put Bobby Masangya, of Batan, Aklan, on the stand.

He testified that on July 8, 1986 he boarded a Seraspi bus headed for Kalibo. It was driven by the victim, and in which the accused was the inspector. He also said that accused actually alighted at the New Washington-Banga--Kalibo intersection, and jumped off it while the bus was in motion. The bus later stopped at D. Maagma Street near the Castillo monument and in front of the Seventh-Day Adventist Church.

He subsequently saw the accused on a motorcycle proceeding toward the bus. He stated that he was then a seat behind the driver, by the window. There were allegedly about twenty-five other passengers on board the bus. The

accused then supposedly parked his motorcycle, dismounted, and "he had with him a clutch bag and he went round the portion of the bus where the driver was situated then opened his clutch bag, took a gun and [shot] the driver." [7] He allegedly shot him outside the bus, from the driver's window. Mr. Masangya said he rose and dashed toward the back of the bus and jumped out of the window. He heard two more gunshots thereafter.

He also asserted that he did not hear any conversation preceding the shooting between the accused and the victim, and that the accused did not carry anything when he first got off the bus. At the first shot, the other passengers likewise allegedly scurried in all directions and scampered for safety.

Felipe Reprado, of Banga, Aklan, corroborated Masangya's testimony, and alleged that "[s]omebody arrived riding a motorcycle and parked it in front of the Seraspi Mini Bus and then he drew a gun from his waist and shot the driver on his seat." [8]

He said that he was at the "Youth Hostel" along Maagna Street at that time, about twelve meters from the bus. After the first shot, he said that the driver, his face bleeding, stood up brandishing a bolo, after which he heard two shots more.

Dr. Esteban Villaruel, of the Dr. Tumbokon Memorial Hospital, testified that it was he who prepared the medico-legal report of the injuries of the victim. His report revealed:

1 Lacerated Wound, 1.5 x 1.5 cm., Forehead, right;

1 Gunshot Wound, 1 x 1 cm. with Contusion, collar, maxillary area, left;

3 Abrasion, 1 x 4 cms., zygomatic area, right. [9]

Police lieutenant Vicente Seraspi, of Kalibo, then officer-in-charge of the Kalibo Integrated National Police, claimed that the accused, on July 8, 1986, went to the station to surrender a firearm. The accused was allegedly on a motorcycle when he arrived at the station. He also appeared bloodied, for which reason, he was advised to check into a hospital, the Dr. Tumbokon Memorial, about 200 meters away.

He identified the firearm to be a "Rohm", with serial No. 44600, with three live ammunition and three empty shells in the cylinder.

The trial judge found the evidence for the prosecution more convincing and compatible with claims that the accused had been guilty of murder, qualified by treachery. He sentenced the accused to reclusion perpetua, taking into consideration the mitigating circumstance of voluntary surrender, offset, however, by the generic aggravating circumstance of evident premeditation. The accused was also adjudged to indemnify the heirs of the deceased in the amount of P30,000.00, and to pay the costs.

As we said, we affirm, save for certain modifications, the judgment under appeal.

There is no question that the accused shot the victim, three times, which caused his death. The only question is whether or not he shot him in self-defense. The evidence before the trial court, as found by the judge, indicated that it was plain murder and that it was the victim, in hacking away at the accused, which also caused some injuries to the latter, who was in fact defending himself from the former's assault. The errors raised by the defense have to do with the assessment of the believability of the witnesses' testimonies, and we have held time and again that credibility of witnesses is a matter we leave, as a general rule, to the trial judge to determine. [10] This is so because first, the Supreme Court does not try facts. Its office is preeminently, to review errors of law. No valid reason has been advanced why we should depart from the rule.

The evidence indeed discloses that the accused, contrary to his story, had earlier alighted from the bus, followed it

via a motorcycle, parked it as the bus parked, slinked around it, and shot the deceased from the window. Two reasons persuade the Court. First, the witness', Bobby Macangya's testimony, wherein he categorically declared that the accused acted in the manner above-described. As the court a quo did, we find his testimony to be forthright, candid, and persuasive. The accused has not successfully shown any improper motive why Mr. Masangya should perjure his testimony. Second, it jibes with the accused's very evidence that he knew how to operate a motorcycle, and the fact that he was seen riding one and arrived at the crime scene on one. Third, police lieutenant Vicente Seraspi, testified that the accused arrived at the station aboard a motorcycle. The accused's bare denials that he had been all along on board the bus can not overcome these positive testimonies.

The fact that Masangya maintained that the accused drew his pistol from a clutchbag, while Felipe Reprado said that he reached for it from his waist, does not contradict meaningfully the finding that he did draw a firearm and that he shot the deceased with it. At best, the conflicting testimonies involve an inconsistency on an insignificant footnote explained, first, by the swift turn of events that had unfolded, and second, by the frailty of human memory. At any rate, the accused admits having shot the victim, and whether he shot him with a gun he kept in a clutchbag or tucked under his waist, the fact remains that he had a gun, and that he shot the victim with it.

We can not accept the accused's claim of self-defense, first, because he has not convincingly shown it amid the ample proofs that he was not defending himself, but rather, was committing cold-blooded murder. The testimony of defense witness Arthur Castor, to the effect that he was the lone passenger who witnessed the event, is belied by the fact that Masangya, for one, and Reprado, for another, had come forward to testify that there were other passengers aboard, and that they numbered around twenty-five.

The accused can not point to his injuries to illustrate self-defense. What the evidence shows is that after he fired his first shot, the victim did not die immediately, although normally it would have been fatal, but managed to alight from the bus and swing away with his bolo for which the accused fired at him again--twice. Dr. Villaruel himself, in reply to the questioning: "...could the victim inflict those wounds to the accused after he was shot...[11] stated that: "It is possible." [12] Indeed, the records show that the accused sustained but minor wounds, which did not require confinement, and which give rise to valid inferences that the victim had been weakened and had swung at the accused indiscriminately. This was in fact confirmed by Masangya and Reprado that after the first shot, the deceased rose wielding a bolo.

The records indeed suggest that the victim had managed to get off his seat, exit from the bus, and follow his assailant outside (notwithstanding his facial wound) since he, the victim, was found lying on the ground.

It is not therefore farfetched to say that the deceased could still have attacked the accused with his bolo although he had already been injured. Two things convince us: (1) Reprado, prosecution witness, testified that he saw the victim stand up after the first shot was fired; and (2) while he did not see what transpired later, the evidence on record shows that the victim fell on the ground, outside the bus, which means that he was able to leave the vehicle, and that judging from the accused's admitted bodily cuts, he managed to bolo, without fatal success, the accused.

As the Solicitor General further observes, the shots came at intervals, in Mr. Reprado's language, "(p)erhaps two (2) minutes," [13] meaning, that, there was activity after the first shot.

That the offense was attended by treachery is adequately buttressed by the records. Under the law, treachery involves a mode of attack adopted by the culprit to insure consummation with no risk to himself. [14] The circumstances herein show that the accused had alighted from the bus, rode on a motorcycle, pursued the bus, and once it had parked, snaked around it and shot its driver. Although the victim did not die immediately, the attack made on him was sudden, without warning, and which caught him with his guards down. We can not say that the

victim had insinuations that the accused would commit a dastardly act because of their earlier altercation, assuming that there was such an altercation, because a brief interval had passed between that and the actual act of shooting. Albeit in one case,[15] the Court held that where the victim was able to retreat, although the attack was sudden, alevosia can not be appreciated, the Court can not apply that case here. In that case, the victim, upon retreating was able to defend himself, and he can not be said to have been defenseless. Here, however, the accused had wounded the victim--as a consequence of his surprise attack--and if he, the victim, happened to "defend" himself, it was no defense at all, although he was able to inflict superficial wounds on the accused.

We rule out, however, evident premeditation (which the trial court appreciated as a generic aggravating circumstance) because in evident premeditation, the time the accused had mustered the determination to commit the crime must be well-established. It was not shown here.

The Court is put to task in appreciating voluntary surrender as a mitigating circumstance because all that the records reveal is that the accused trooped to the Kalibo police headquarters to surrender the firearm. It is not clear whether or not he also sought to submit his very person to the authorities. We leave him, however, the benefit of the doubt, and consider his arrival at the police station as an act of surrender.

There being one mitigating circumstance, the accused is hereby sentenced to the minimum period prescribed by law for the crime of murder, reclusion temporal maximum, and pursuant to the indeterminate sentence law, he is sentenced to ten years and one day of prision mayor, to eighteen years and one day of reclusion temporal, and, in the light of the new policy of the Court, to pay an increased indemnity of P50,000.00 from the amount of P30,000.00 fixed by the trial court.

WHEREFORE, this appeal is DISMISSED. The accused-appellant is SENTENCED to undergo imprisonment of ten (10) years and one (1) day of prision mayor, to eighteen (18) years and one (1) day of reclusion temporal; to pay indemnity in the sum of FIFTY THOUSAND (P50,000.00) PESOS to the heirs of Noel Rimón.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Paras, J., on leave.

[1] Original Records, 21.

[2] Hon. Volicaria, Fructuoso, presiding Judge, Regional Trial Court, Branch 6, Kalibo, Aklan.

[3] T.s.n., Session of August 11, 1987, 5.

[4] T.s.n., Session of September 25, 1987, 4.

[5] Original Records, id., 176-K.

[6] T.s.n., Session of November 27, 1987.

[7] T.s.n., Session of March 18, 1988, 16.

[8] T.s.n., Session of April 7, 1988.

[9] MEDICO-LEGAL REPORT ON PHYSICAL INJURIES. July 30, 1986.

[10] See, e.g., Araneta v. Court of Appeals, G.R. Nos. 43527 and 43745, July 3, 1990.

[11] T.s.n., Session of June 15, 1988, id., 5.

[12] Id.

[13] T.s.n., Session of April 7, 1988, id., 7.

[14] People v. Cempron, G.R. No. 66324, July 6, 1990.

[15] People v. Diva, No. L-22946, April 29, 1968, 23 SCRA 332.

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