

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAMON REBULLAR Y PASCUAL AND CARLOS BALDOMERO ALIAS
“ALOT”, DEFENDANTS. RAMON REBULLAR Y PASCUAL,
ACCUSED-APPELLANT.**

G.R. No. 88414. August 21, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Ramon Rebullar and Carlos Baldomero were charged in the Regional Trial Court of Cavite, Branch 16 for the murder of Dennis Herrera. The amended information filed against them alleges:

“The undersigned 2nd Asst. City Fiscal for the City of Cavite accuses Ramon Rebullar y Pascual and Carlos Baldomero @ Alot of the crime of Murder, committed as follows:

“That on or about September 7, 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with firearms, with intent to kill, treachery, evident premeditation and with the use of motor vehicle, did, then and there, wilfully, unlawfully and feloniously shoot several times one DENNIS HERRERA Y MONICAYO, hitting and inflicting upon him several gunshot wounds, which ultimately cause (sic) his death.

All contrary to law, and with other aggravating circumstances to wit: that the crime was committed in the dwelling of the victim and during nighttime.” (Original Record, p. 15)

Only Ramon Rebullar was apprehended and tried as the other accused remained at large.

On arraignment, the accused-appellant pleaded not guilty. Trial followed and a decision was rendered finding the accused guilty of murder. The decretal portion of the assailed decision reads:

“WHEREFORE, in view of the foregoing, the Court finds accused Ramon Rebullar y Pascual GUILTY beyond reasonable doubt of the crime of ‘Murder’ and he is hereby sentenced to undergo imprisonment of reclusion perpetua; to indemnify the heirs of Dennis Herrera the amount of P30,000.00; the amount of P50,000.00 as funeral expenses, without subsidiary imprisonment in case of insolvency and to pay the costs.” (Original Records, p. 232)

The prosecution’s evidence is summarized by the trial court as follows:

“xxx xxx xxx

[O]n September 7, 1985, at about 10:00 o’clock in the morning [should be around 12:00 o’clock midnight of September 7, 1985 (June 6, 1986 tsn., p. 15; June 27, 1986 tsn, p. 7)], Roselyn Samonte-Herrera, while sleeping in their house at 8:30 (earlier) in the evening at Lopez Jaena St. at Cavite City, was awakened by a tricycle parking in front of their house and shouts of ‘Dennis’ ‘Dennis’ were heard and which she ignored because the men who alighted from the tricycle were still on the street; that she then heard the gate open and

when she peeped out of the window she saw them inside the yard; one was already in front of the window and ordered her to open the door, while the other was already at the door and said he would want to talk to Dennis.

So, she turned on the light on the front door as the sala was already lighted and the accused Ramon Rebullar y Pascual with someone behind him told her they wanted to talk to her husband, Dennis Herrera and when she replied that it would be alright for them to tell her what they wanted, she, being his wife would be just like telling Dennis; but they both disagreed and so she was forced to wake up her husband and as they came out of the room towards the sala and when her husband asked them why, he was shot point blank and witness, fearing for the safety of her daughter inside the bedroom, skipped inside to get her nine year-old daughter and laid her down to the floor so that she would not be hit and when she returned to the sala she saw the accused Ramon Rebullar shooting at her husband while Carlos Baldomero alias Alot suddenly headed towards her in order to shoot her; that while her husband was already lying on his belly, he was still being shot at by Ramon Rebullar and so she locked herself inside the room; that one of the shots hit the closet of her daughter and another the typewriter; that the shooting took about 15 minutes while she just kept shouting inside the bedroom and in the process, one of her daughters was aroused and who told her that the gunmen had left and so she went out of the room she saw her husband, Dennis Herrera wallowed (sic) in the pool of his own blood.

Hysterical and shocked, she cried out and shouted running out of the house and when she saw that many people already approaching and who brought her husband to Bautista Hospital, she was left behind with her children waiting for the policemen to come and conduct an investigation and after quite a lapse of time, policemen arrived and went inside the house and looked around, while a certain Fred Agana, an official photographer of the Cavite City Integrated National Police took pictures of the house, a picture of screened door showing the point of entry of the bullets, which according to the policemen there were six points of entry, while the counsel for the accused insisted that there were at least eight holes.

Likewise the spot on which the deceased was sprawled and the pool of blood around him while portions of the house where slugs were found were also depicted. She then went to the Cavite City police station at about 9:10 a.m. of the same morning, where she picked out picture of the accused Ramon Rebullar y Pascual, whom she did not know before the incident from the Cavite City police station's rogues gallery and whom she identified as black with curly hair with bulging eyes and that of Carlos Baldomero alias Alot.

Later on, she pointed to the accused who was ranged in a police line-up inside the City jail along with other prisoners after Ramon Rebullar was fetched from his residence and who voluntarily surrendered." (Rollo, pp. 29-32)

In this appeal, the accused raises a sole assignment of error, to wit:

"THE TRIAL COURT ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT OF THE CRIME OF MURDER, THE CRIME PROVED BEING ONLY ONE OF HOMICIDE." (Rollo, p. 63)

The appellant's contention is devoid of merit. The records clearly show the presence of the qualifying circumstances of treachery and evident premeditation.

The accused-appellant contends that even if the attack is sudden, it is not sufficient to prove treachery. In support of this defense, he cites the cases of *People v. Atienza*, 148 SCRA 147 [1987] and *People v. Manalo*, 148 SCRA 98 [1987]. The facts of the present case are different from those of the cases he mentions. For one, the prosecution witness in the *Atienza* case did not actually see the killing. Conviction was on the basis of circumstantial evidence. On the other hand, the prosecution witness in the case at bar saw the accused shoot the victim as she was only a few feet away from them when her husband was killed. In the *Manalo* case, the accused stabbed the victim while the two were facing each other. The victim had the opportunity to defend himself.

The present case is, however, different. The accused was positively identified by the wife of the victim and the

attack while frontal did not offer the victim any opportunity for defense as he had just risen from his sleep. The case of *People v. Perante, Jr.*, 143 SCRA 56 [1986] states that there is treachery when the victim had just awakened and might still be dazed and unprepared for the attack and would not be in a position to offer any risk or danger of retaliation to the attacker. The various circumstances surrounding the shooting from the time they entered the house, forced the wife to wake up her husband, and immediately pumped him with bullets as he came out into the sala indicate a treacherous attack which left no opportunity to the victim to defend himself and which insured the killing with absolutely no risk to the killers.

The fact that the victim's wife saw the accused-appellant shoot the victim belies the accused's denials and alibi. (*People v. Parilla*, 144 SCRA 454 [1986]) It was Roselyn Herrera whom they earlier talked to and she was a few feet away from her husband when he was shot. The wife herself barely escaped being killed.

As stated in an earlier case, the negative assertion that accused did not stab the victim cannot prevail over the positive testimony of the prosecution witness x x x (*People v. Amoncio*, 144 SCRA 384 [1986]).

Moreover, it is not disputed that the appellant and the victim were at the same party prior to the incident and that the appellant was hit with a beer bottle by the victim and suffered injuries during the incident. There was motive for the killing.

Anent the allegation of the absence of evident premeditation, the accused merely states that this circumstance was absent in the trial court's finding but he makes no attempt to satisfactorily substantiate his point.

We hold that the trial court correctly appreciated the qualifying circumstance of evident premeditation. The accused had reason to commit the crime. The records show that during the birthday party of Sgt. Leaño, Dennis Herrera hit the accused-appellant on the face at about 5:30 in the afternoon. At 9:00 in the evening, they were brought to the police station but Rebullar declined to file charges despite the injuries he had sustained. According to the trial court, the accused Rebullar thought of retaliating against the victim rather than filing charges against him which was the lawful and natural procedure as he was already in the police station and his own step brother, Captain Benjamin Rebullar was Operations Officer of the police force. Thus, between 12:00 midnight and 1:00 in the morning, he and his co-accused went to the victim's house which is a manifestation of his determination to cling to his plan to kill the latter.

We agree with the accused-appellant that the use of motor vehicle and the circumstance of nighttime are not aggravating circumstances in this case. The accused rode in a motor vehicle but it was not a "means" used to commit the crime. There is no showing that the motor vehicle was used precisely to facilitate the commission of the crime. In the same manner, nighttime was not especially sought in the commission of the crime as the house was adequately lighted at the time. The evidence does not establish that the appellant took advantage of nocturnity, that he especially sought the coming of night, and that it was not simply the effect of a succession of events from the brawl to the killing. These notwithstanding, the crime committed is still murder considering the aggravating circumstances of treachery and evident premeditation.

The fact that Rebullar voluntarily went with the police does not negate liability. He was positively identified by the victim's wife as one of the assailants.

Neither will the accused's assertion of the absence of paraffin traces prove his innocence. As pointed out by Aida Magsipoc, Research Biologist of the NBI who conducted the paraffin test on Rebullar, negative findings on the paraffin test does not mean that he did not fire a gun. On the contrary, there is a great possibility that there will be no paraffin traces on the hand if the bullet was fired from a .45 caliber pistol.

As stated by the trial court:

“On questioning by the Court, witness cited several factors wherein a person who has fired his firearm but was negative for nitrates; the type of the caliber of the ammunition of the firearm itself; a new firearm or revolver type would be so close that nitrates could not escape from the bridge of the gun, whereas an old firearm where the mechanism is already a little bit loose, more nitrates appear in the subject who fired the gun; the direction of the wind if the subject is firing the firearm against the target, the nitrates will be blown away from the scene and so he would also be negative of nitrates; depending on the velocity of the wind, humidity of the area where the shooting happened; in a closed room or place and there is no wind on or against the firearm, he could be positive for nitrates; whereas outside the room he would be negative and the less humid the area the less fall of nitrates on the subject, and another possibility is if the subject is using something to cover his hand firing the gun it would be negative for nitrates and in using a 45 caliber gun, which has a close and tight compartment where the bullet is set and with the revolver type firearm which has an open chamber, the former has a greater possibility that he would be negative for nitrates.” (Rollo, 37-38)

WHEREFORE, the decision of the trial court is hereby **AFFIRMED** in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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