

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REDENTOR ESQUILONA, ACCUSED-APPELLANT.

G.R. No. 89213. September 08, 1995

Ponente: VITUG, J.

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VITUG, J.:

On the night of 21 January 1985, at around eight o'clock, Honorato Laurio, Sr., was shot while preparing at home the soybeans he would use for sowing the following day in Sitio Malbug, Barangay Batuila, Baleno, Masbate. The victim's wife, Lourdes Rapsing, rushed to the kitchen, from where the direction of the gunfire had been heard, and there she saw her bloodied husband sprawled by the door. Just as she reached over to cuddle her husband, the latter remarked that Redentor Esquilona had shot him. She caught momentarily a glimpse of the man running away towards the creek at the back of their house

The victim's 9-year old son, Honorato Laurio, Jr., hurrying down the stairs at the sound of gunshot, had come face to face with Redentor Esquilona, who was holding a homemade gun called "Iantaka," before the latter fled towards the nearby creek. The lighted lamp and the evening moon enabled him to recognize Esquilona.

At around eleven o'clock that same evening, Honorato Laurio, Sr., succumbed to the two bullet wounds — one on his abdomen and the other on his breast — that he had sustained.

On 25 March 1985, an Information was filed with the Regional Trial Court of Masbate (Criminal Case No. 4703), Branch XLIV, charging Redentor Esquilona with Murder. The information read:

"That on or about January 21, 1985, in the evening thereof, at sitio Malbug, barangay Batuila, Municipality of Baleno, Province of Masbate, Philippines, within the jurisdiction of this court, the said accused with intent to kill, evident premeditation, treachery and with the use of a superior arm did then and there willfully, unlawfully and feloniously attack, assault and shoot with a homemade gun 'Iantaka' one Honorato Laurio y Manlapaz hitting the latter on the chest and abdomen, thereby inflicting wounds which directly caused his instantaneous death." [1]

The accused pleaded "Not Guilty" to the charge. His testimony, as well as that of his witness Dominador Montilla, attempted to show that he and Montilla were having a drink at the latter's house, when they heard a gunfire, a common occurrence in the area, at or about the time of the shooting incident at the Laurio residence. The house of the accused is about 500 meters away from the Montilla dwelling and 400 meters from the victim's home.

On 09 March 1989, after a protracted trial, the Regional Trial Court rendered its decision finding accused Redentor Esquilona guilty beyond reasonable doubt of the crime charged and adjudging thusly:

"WHEREFORE, viewed from what transpired during the trial of this case, this court, being convinced of the guilt of the accused beyond reasonable doubt is being found guilty of the crime of MURDER, he is hereby sentence to suffer the penalty of RECLUSION PERPETUA after considering that it was qualified with treachery and there being no mitigating circumstances. He is further ordered to pay the heirs of the victim in

the amount of P30,000.00 as moral damages and to pay the costs of the suit. The detention of the accused before he was able to put up his bond for the temporary liberty is counted in his favor and shall serve the sentence at the National Penitentiary."[2]

In this appeal, the accused insists that the evidence against him is not enough and falls short of the quantum of proof required to sustain a conviction.

That accused-appellant was the one responsible for the killing of Honorato Laurio Sr., could hardly be disputed.

We begin with the victim's own dying declaration testified to by the widow thusly:

"Q.

At that time, do you know of any unusual incident that happened in your house?

"A.

Yes, sir.

"Q.

Please tell the court?

"A.

That evening I was in our house . . . and my husband is in the kitchen cleaning the soybeans. After that I heard somebody fired a gun. When I went to the kitchen I saw my husband full of blood. Then he told me that he might die.

"Q.

What did you do when you saw that your husband full of blood?

"A.

I helped him and he told me that the one who fired his gun . . . because he can still talk ... the one who shot was Redentor Esquilona.

"Q.

You said that when you helped him, your husband told it was Redentor Esquilona who shot him. Did he say anything more aside from that statement of your husband?

"A.

No more, sir.

"Q.

Why, what happened to your husband?

"A.

I told him to just keep strong and I will bring you to the municipal building, but then at about 11:00 o'clock in the evening he died."[3]

An ante mortem declaration is entitled to highest credence, as it should so be, for scarcely would a person who knows of his impending death make a careless, let alone false accusation.[4] There is no question to our mind that the statement of the victim just a few hours before his death so meets the requirements for its admissibility in

evidence as a dying declaration, i.e., that (1) it concerns the cause and surrounding circumstances of the declarant's death; (b) that at the time it is made, the declarant is under a consciousness of being on the verge of death; (c) that he is a competent witness; and (d) that his declaration is offered in evidence in a criminal case for homicide, murder or parricide in which the declarant is the victim.[5] Moreover, the statement of the deceased, even assuming its impermissibility as a dying declaration, would still have strong probative value as part of res gestae. This rule merely requires that (a) the statement is spontaneous; (b) it is made during a startling occurrence or immediately prior or subsequent thereto; and (c) it relates to the circumstances of such occurrence.

Additionally, positive identification was made by young Laurio who stated that upon rushing down the stairs soon after the gunshots were heard, he came face to face with accused-appellant.[6] He testified that the distance between him (Laurio, Jr.) and the assailant was merely six meters, the place was sufficiently lighted, and the Laurio and Esquilona families were neighbors of long standing.[7] It would have been unlikely for Laurio to have mistaken appellant for somebody else.

Accused-appellant's contention that young Laurio did not immediately inform the police authorities of the assailant's identity was belied by both Laurio and Pfc. Manuel Bravante. Laurio, Jr., testified:

"Q.

Were you investigated by the policeman when they came to your house?

"A.

Yes, sir.

"Q.

What did the policeman do if any?

"A.

The policeman asked whether I saw the man who shot my father.

"Q.

Did he ask you who was that person who shot your father?

"A.

Yes, sir.

"Q.

What was your answer?

"A.

Redentor Esquilona.[8]

Pfc. Manuel Bravante, corroborating Laurio, Jr., confirmed the latter's testimony; thus:

"Q.

And what time more or less did you arrive in the house of Honorato Laurio, Sr.?

"A.

About 10:30 o'clock in the evening.

"Q.

And what did you do immediately after you arrived at the house of Honorato Laurio, Sr.?

"A.

We conducted the investigation on the person of the widow and her children.

"x x x x x x x x

"Q.

You also told the court that you investigated the son of Honorato Laurio, Sr., do you know that son whom you investigated?

"A.

Honorato Laurio, Jr.

"Q.

And what did you ask him in connection with the death of his father?

"A

. I asked him whether it is true that he saw the accused Redentor Esquilona who shot his father.

"Q.

And what was the answer to that question by (sic) Honorato Laurio, Jr.?

"A.

According to him he saw the accused."[9]

Against the case for the prosecution, accused-appellant could only muster the weak defense of alibi. It is well-settled that courts have always looked upon this defense with caution, if not suspicion, not only because it is inherently unreliable but likewise because it is rather easy to fabricate.[10] For alibi to prosper, it would not be enough for the accused to prove that he has been elsewhere when the crime is committed but that he must further demonstrate that it would have been physically impossible for him to be at the scene of the crime at the time of its commission.[11]

We believe, however, that the trial court has erred in appreciating treachery and in having so considered it as an attendant circumstance.[12] Treachery cannot be presumed; it must, instead, be proven as fully as the crime itself. Here, we see no real proof to show that treacherous means have been employed by accused-appellant in committing the offense.

Accused-appellant committed the crime of homicide. There being neither aggravating nor mitigating circumstances, the prescribed penalty under Article 249, in relation to Article 64, of the Revised Penal Code, is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the penalty that can be imposed on accused-appellant is an indeterminate sentence of anywhere within the full range of prision mayor, as minimum, and reclusion temporal medium, as maximum. The award of indemnity should be increased to P50,000.00, in conformity with the prevailing policy.

WHEREFORE, the appealed decision of the trial court is **AFFIRMED** with **MODIFICATION**. Accused-appellant is declared **GUILTY** of **HOMICIDE** and sentenced to suffer the indeterminate penalty of eight (8) years and one

(1) day of prison mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum, and he is further required to pay the heirs of the victim the sum of Fifty Thousand Pesos (P50,000.00).

Costs against accused-appellant.

SO ORDERED.

Romero, (Acting Chairman), and Melo, JJ., concur.

Feliciano, (Chairman), J., on leave.

[1] Rollo, p. 14.

[2] Rollo, pp. 20-21.

[3] Tsn, 24 February 1987, p. 4.

[4] People vs. Dunig, 215 SCRA 469.

[5] People vs. Molas, 218 SCRA 473.

[6] Tsn, 10 March 1987, pp. 7-8.

[7] Tsn, 10 March 1987, pp. 2-3.

[8] Tsn, 10 March 1987, pp. 10-11.

[9] Tsn, 09 March 1987, p. 15-16.

[10] People vs. Cortes, 226 SCRA 91.

[11] People vs. Agcaoili, 206 SCRA 606.

[12] There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (Article 14, paragraph 16, Revised Penal Code)

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